Petition

81-1347

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

NO. _____

ALEXANDER CHIAZOR, ET AL,
Petitioners

v.

TRANSWORLD DRILLING
COMPANY, LTD., ET AL,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

I.

Whether, in view of the Seventh Amendment to the Constitution of the United States, the Jones Act (46 U.S.C. 688) and Rule 12(b)6), F.R.C.P., the district courts, in Jones Act jury cases brought by foreign plaintiffs against American or American controlled defendants in the federal district court, should apply Rule 56, F.R.C.P., to choice-of-law determinations at the pre-trial stage and defer over to the trial on the merits all genuine issues of material facts which are relevant to such determination, as was advocated by the Third Circuit court of appeals in *Chirinos v. Creole Corp.*, 613 F.2d 1240, 3rd Cir., 1980, or should the district courts make a final determination of such disputed issues at the pre-trial stage, as was affirmed by the court of appeals in this case.

II.

Whether the holding of the court of appeals in this foreign seaman Jones Act case that the basic tenets of *Lauritzen v. Larsen,* 345 U.S. 571 (1953), and *Hellenic Lines v. Rhoditis,* 398 U.S. 306 1970), (wherein the Court held that the nationality and base of operations of the owner and/or operator of a vessel and the flag of the vessel are controlling considerations in a choice-of-law determination) apply with minimum force to foreign crew members of offshore drilling vessels, such as submersible drilling rigs, but apply with maximum force to American seamen upon such vessels or to foreign seamen upon "blue water" vessels, is erroneous and contrary to the Jones Act and/or constitutes discrimination against for-

eign seamen (as opposed to American seamen) and American owners of blue water vessels (as opposed to American owners of offshore drilling vessels), in violation of the equal protection clause of the Constitution of the United States (Fourteenth Amendment).

III.

Whether the district court and court of appeals should, in making the choice-of-law determination in this Jones Act case involving a foreign seaman, have applied the "substantiality" test laid down by the Second Circuit in *Bartholomew v. Universe Tankships, Inc.*, 263 F.2d 432, (2nd Cir. 1959), cert. den. 359 U.S. 1000 (1959) and adopted by the Supreme Court in *Rhoditis*, rather than applying the "balancing" or "preponderance" test employed by the courts in this case.

IV.

Whether the district court and the court of appeals, in making the choice-of-law determination in this Jones Act case, in view of the undisputed facts—that the vessel was owned by an American and/or American based corporation; the vessel was operated pursuant to a bareboat charter by an American based corporation; the vessel was controlled by three contracts which called for application of U.S. and/or Bahamian, not Nigerian, law; the vessel was directed by supervisory personnel upon the vessel and in the owning and operating corporations who were all American citizens employed by American based corporations; the proceeds from the vessel's work were paid di-

rectly into Respondents' United States bank accounts and the expenses of operating the vessel were paid directly out of the same accounts; that the law of the suggested foreign forum was grossly inadequate; and that most of the necessary defendant parties were not amenable to process in the suggested foreign forum—should have ruled as a matter of law that there were substantial contacts between the United States and this vessel, its owner, operator and the enterprise in which it was involved and that United States law applies.

LIST OF ALL PARTIES TO THE PROCEEDING IN THE DISTRICT COURT AND CIRCUIT COURT

Petitioners:

Alexander Chiazor,
Comfort Chiazor,
Robert Chiazor,
Sunday Chiazor,
Emeka Chiazor,
Joseph Chiazor,
Gideon Chiazor,
Victor Chiazor,
James Chiazor, and
Grace Chiazor,
Individually and as Representatives of the Estate of Joel Chiazor, Deceased.
Mabel Owenmuezor

Respondents:

Transworld Drilling Company
Transworld Drilling Company, Ltd.
Kerr-McGee Corporation
Kerr-McGee Ltd.
Transworld Drilling Company (Nigeria) Ltd.

SPECIAL NOTE OF REFERENCES

For convenience, Kerr-McGee Corp., and its predecessor in name, Kerr-McGee Oil Industries, Inc., a Delaware corporation, will be referred to as "Kerr-McGee U.S.A." The other relevant corporations will be referred to in the same names employed in the court of appeals opinion, to-wit: Transworld Drilling Company, Ltd., a Bahamian corporation, as "Transworld Bahamas"; Transworld Drilling Co., a Delaware corporation, as "Transworld U.S.A."; Kerr-McGee, Ltd., a Bahamian corporation, as "Kerr-McGee Bahamas"; and Transworld Drilling Company Nigeria, Ltd., a Nigerian corporation, as "Transworld Nigeria". Gulf Oil Company (Nigeria) Ltd. will be referred to as "Gulf Nigeria" and Dresser (Nigeria) Ltd. and Dresser Magcobar Minerals, Ltd. will both be referred to as "Dresser Ltd." Two depositions were taken on the choice-of-law question of the officer of the Transworld and Kerr-McGee companies, Mr. Von Tungeln. We have attached as appendices relevant portions of Von Tungeln's two depositions, the exhibits thereto and answers to interrogatories, and those will be referred to by their Appendix numbers, except for the two depositions. The depositions will be referred to by stating "VT Depo I" or "VT Depo II". The most pertinent excerpts from the depositions can be found in Appendix 8 for VT Depo I and Appendix 9 for VT Depo II. The pertinent excerpts from the exhibits to the depositions (such as drilling contract, bareboat agreement, employment agreement) are contained in Appendices 10-A through 10-Q.

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REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED BY COURTS BELOW

1. The judgment and opinion of the district court was rendered the 5th day of November, 1979 in Cause No. 78-3433 in the United States District Court for the Eastern District of Louisiana, New Orleans Division (unreported). The opinion and order of the district court overruling plaintiffs' Motion for Reconsideration was entered on January 14, 1980. The judgments and orders of the district court are attached as Appendices 1A-1B.

2. The judgment and opinion of the United States Court of Appeals for the Fifth Circuit, dated June 23, 1981, is reported and is published at 648 F.2d 1015 (5th Cir., 1981). The opinion and judgment of the Court of Appeals is attached as Appendix 2.

3. The order of the United States Court of Appeals, Fifth Circuit, denying Petitioners' Petition for Rehearing and Rehearing En Banc, dated September 23, 1981. Said order is attached as Appendix 3.

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The judgment of the Court of Appeals was entered on June 23, 1981 (Appendix 2). A timely Petition for Rehearing and Rehearing En Banc was denied on September 23, 1981 (Appendix 3). The jurisdiction of this Court is invoked under 23 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES WHICH THIS CASE INVOLVES

This case involves directly and indirectly the construction and application of the following constitutional pro-

visions, statutes and rules of procedure: Amendments 7 and 14 to the Constitution of the United States; the Jones Act, 46 U.S.C. 688; the Death on the High Seas Act, 46 U.S.C. 761; and Rules 12 and 56 of the Federal Rules of Civil Procedure. These all are reprinted in pertinent part and attached as Appendices 4A-4G.

STATEMENT OF THE CASE

A. Course of the Proceedings Below.

On or about November 13, 1977, Joel Onochie Chiazor, a Nigerian citizen, was employed by Dresser, Ltd. as a mud engineer on Kerr-McGee-Transworld Rig 46, a semi-submersible drilling rig, while it was engaged in drilling offshore Nigeria on an offshore lease owned by Gulf Nigeria. The drilling activities were being carried out pursuant to a contract between Gulf Nigeria and Kerr-McGee U.S.A., which had its principal place of business in the United States. At the time the accident occurred, Rig 46 was owned either by Kerr-McGee U.S.A. or Kerr-McGee Bahamas, a subsidiary of Kerr-McGee U.S.A., which had its only operating office in the United States, and it was bareboat chartered to Transworld Bahamas, another subsidiary of Kerr-McGee U.S.A., which also had its only operating office in the United States.

On November 13, 1977, there was a flash fire in the mud pit room of Rig 46, as a result of which Joel Chiazor was seriously injured and subsequently died. The decedent's widow filed suit in the United States district court in New Orleans against Transworld U.S.A. and subsequently added Transworld Nigeria. The Respondents filed a motion to dismiss the case on grounds of absence of jurisdiction over the subject matter, failure to state a claim upon which relief could be granted and *forum non*

conveniens. Petitioners subsequently moved to file an amended complaint impleading Kerr-McGee U.S.A., Transworld Bahamas and Kerr-McGee Bahamas.

The district court granted the motion to dismiss, holding that Nigerian law applied and that the case should be dismissed on grounds of *forum non conveniens.* Petitioners filed a motion for rehearing of the denial order, which the district court subsequently denied. It was from those orders that the Petitioners perfected their appeal. The court of appeals affirmed the district court.

B. Evidence Relevant to Choice-of-Law Question.

(1) History of the Vessel Transworld Rig 46.

Transworld Rig 46 is a semi-submersible drilling rig built in Mississippi by an American company and designed by Kerr-McGee U.S.A. (VT Depo I, pp. 32-36, 46, 109; VT Depo II, pp. 12-15, Appendix 5). All of the major component parts of the vessel (such as drawworks, rotary, mud pumps, engines and BOP stacks) were made in the United States (See App. 5, VT Depo I, App. 8).

At the time of the accident, the rig flew no flag (VT Depo I, p. 33) and the Respondents' officers gave as their reason for not registering and flagging the rig that it was "not a vessel" (affidavit of John Gillespie, App. 7-B, and VT Depo I, p. 33). However, the courts have consistently held that a semi-submersible rig is a "vessel".[1] Moreover, Rig 46 drilled in various locations in the Gulf of Mexico

1. *Offshore Company v. Robison,* 266 F.2d 769 (5th Cir. 1954); *Hicks v. Ocean Drilling & Exploration Company,* 512 F.2d 817 (5th Cir. 1975); *Producers Drilling Co., et al v. Luther Gray,* 361 F.2d 432 (5th Cir. 1966); *Marine Drilling Co. v. Autin,* 363 F.2d 579 (5th Cir. 1966). It should be noted that Respondents at no time in this lawsuit pled that Rig 46 was not a "vessel" within the meaning of the Jones Act.

from 1956 to 1964 (VT Depo I, p. 49) and then was moved in 1964 across the Atlantic Ocean to drill in various locations offshore Nigeria (VT Depo I, pp. 48, 49 and see App. 10-A, the drilling contract with Gulf).

On June 23, 1964, Rig 46 was transferred from Kerr-McGee U.S.A. to Transworld Bahamas (App. 10-B) and then later, according to Von Tungeln, Respondents' officer, was transferred from Transworld Bahamas to Kerr-McGee Bahamas (VT Depo I, p. 48; VT Depo II, pp. 23-24) in order, according to Von Tungeln, *to avoid the effect of Nigerian law* (VT Depo I, p. 50). However, according to the Supplemental Answers to Interrogatories filed by Respondent Transworld Nigeria, Transworld Rig 46 was owned by "Kerr-McGee, Inc." (Del. corporation) at the time of the accident in question (Answer 14c, App. 7-A) and the court of appeals found and assumed that "Kerr-McGee U.S.A. is the ultimate owner, and the shipowner's base of operations is in the United States." (648 F.2d at p. 1018, Footnote 4).

The basic drilling contract under which the vessel was operating at the time of the accident was executed between Gulf Nigeria and Kerr-McGee U.S.A. (see Exh. 9 of VT Depo II, App. 10-A) and provided that Kerr-McGee U.S.A. would be liable for all injuries or death occurring upon Transworld Rig 46 (p. 19 of contract); that Kerr-McGee U.S.A. "could not assign this contract unless granted written consent by the company (Gulf Nigeria)" (id., p. 19); that if Kerr-McGee U.S.A. did assign the contract it had to "guarantee performance of said substituted entity of all contractors' obligations and liabilities hereunder" (id., p. 30); and that said contract was executed "in the State of New York and . . . its validity, interpretations, and enforcement shall be governed by the laws of

the said State of New York" (id., p. 34, all these excerpts are contained in App. 10-A).

On April 21, 1964, Transworld Bahamas was substituted by Kerr-McGee U.S.A. as the "contractor", said substitution being formally executed by Mr. Seale of Kerr-McGee U.S.A. and George B. Parks of Transworld Bahamas in Oklahoma City (App. 10-D) and the substitution was expressly approved by Gulf Nigeria. At the same time, Rig 46 was chartered by Kerr-McGee Bahamas to Transworld Bahamas (see "Agreement for Bareboat Charter and Operation of Drilling Unit", Pltfs. Exh. 7, VT Depo II, App. 10-E). The charter provided that Transworld Bahamas would perform the drilling required by the rotary drilling contract with Gulf; that it was executed in the United States on behalf of Transworld Bahamas by George Parks and on behalf of Kerr-McGee Bahamas by F. C. Love, both Americans with offices in Oklahoma City (see App. 10-P); and that "all of its terms and provisions are to be considered a Bahamian contract and shall be construed according to the law of the Bahama Islands" (see par. 10, p. 4 of Charter; all these excerpts are contained in App. 10-E).

On February 10, 1969, a letter was executed in Oklahoma City by and between three Americans who office there (Parks, Love and Grier Zimmerman; see App. 10-P), each of them acting for Transworld Bahamas, Kerr-McGee Bahamas and Transworld Nigeria, respectively, purportedly providing for a "subcontracting of Rig 46 to Transworld Nigeria" (letter dated February 10, 1969, in Exh. 9 of VT Depo II, App. 10-J). Gulf Nigeria applied that acceptance of the subcontracting of Rig 46 to Transworld Nigeria was conditioned upon Gulf's receipt of a "document of assignment of said contract from Trans-

world Drilling Company to Kerr-McGee, Ltd. and . . . a document subcontracting performance of work under said contract from Kerr-McGee, Ltd. to Transworld Drilling Company (Nigeria) Ltd." (see letter from Strand of Gulf Nigeria, App. 10-H). The Respondents contend that the letter dated February 10, 1969 (App. 10-J) served to comply with the conditions of Gulf's letter (App. 10-H) but there was no showing that this letter (App. 10-J) was ever sent to Gulf (it was not addressed to Gulf).[2] In addition, Respondents never explained why, if they had really intended that Transworld Nigeria operate Rig 46, that on the same day the alleged "subcontract" letter was signed, another letter (App. 10-I) was signed substituting Transworld Bahamas, not Transworld Nigeria, as the contracting party with Gulf Nigeria.

Moreover, the correspondence between Gulf Nigeria at its office in Nigeria and Kerr-McGee at its office in Oklahoma City (random samples are contained in Apps. 10-H through 10-N) demonstrates that despite such alleged "subcontract" to Transworld Nigeria, both Gulf and Kerr-McGee thereafter continued to deal directly with each other as in the past, ignoring Transworld Nigeria as having anything significant to do with Rig 46's activities. And most important is the fact that Transworld Nigeria stated under oath in answer to interrogatories that it neither owned nor "operated, chartered or controlled" any vessels at the time of the accident (Interrog. 42, App. 7-A), thus totally negating the fact that it had been subcontracted any "control" over Rig 46.

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2. Furthermore, it is undisputed that no bill of sale, written substitution agreement, new bareboat charter agreement or unconditional written acceptance by Gulf was ever executed, as was done in 1964 and 1968 when Transworld Bahamas, and then Kerr-McGee Bahamas, took over the drilling contract (see Apps. 10-B, 10-C, 10-D and 10-E).

Furthermore, as indicated by the manner in which the Respondents represented themselves in the "Worldwide Directory, *Offshore Contractors and Equipment*", Transworld Bahamas is the operator of Rig 46 and its operating office is "Kerr-McGee Center, Oklahoma City OK 73125" with its "Management Personnel same as Transworld Drilling Company" (a Delaware corporation, with its main operating office in the Kerr-McGee Center in Oklahoma City) (App. 5).

These representations in the worldwide journals are corroborated by the undisputed facts that the drilling superintendent, Cable, the toolpusher and other supervisory personnel over the rig were all employed by Transworld Bahamas and/or Transworld U.S.A., paid in American dollars out of bank accounts in Oklahoma City, had no connection with Transworld Nigeria, and were controlled by John Gillespie and other Kerr-McGee and Transworld U.S.A. officers from Oklahoma City (VT Depo I, pp. 38-43, 46, 67, 68, 82, 83; VT Depo II, pp. 48-51, 56-62; Apps. 8 and 9, and see answers to interrogatories, App. 7A).[3] Indeed, the depositions of Mr. Von Tungeln indisputably reveal that the day-to-day operations of the rig, as well as its ultimate control, were in the hands of Americans on the rig or Americans in the Oklahoma City office all employed by American and American based corporations (see particularly the testimony excerpts in Apps. 8 and 9).[4]

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3. Von Tungeln testified that maintenance and most of the day-to-day functions involving Rig 46 were done "at location, not usually on the shore" (VT Depo I, pp. 52, 67, 68).

4. E.g., Von Tungeln testified that the decision as to "where Drilling Rig 46 is going to be . . . would be made in Oklahoma City" (VT Depo I, p. 66, App. 8) and that decisions pertaining to the Gulf contract or with anybody else "will be handled out of Oklahoma City" (VT Depo I, pp. 66, 67, App. 8).

Also significant is the testimony of Von Tungeln disclosing that the income from the drilling operations of Rig 46 was paid by Gulf Nigeria into the Oklahoma City bank accounts of Kerr-McGee, with the expenses of the vessel being paid directly out of those same Oklahoma City bank accounts (see Apps. 8 and 9, excerpts from VT Depo I, pp. 43-46, VT Depo II, pp. 131, 132, App. 9). In addition, most of the victuals, parts and supplies for Rig 46 came directly or indirectly from the United States (VT Depo II, p. 171, Apps. 8 and 9).

(2) Transworld Nigeria Was the Alter Ego of the American Based Kerr-McGee/Transworld Companies and the Nigerian Drilling Enterprise, Insofar as it Involved the Kerr-McGee/Transworld Companies, Had its Base of Operations in the U.S.

Kerr-McGee U.S.A. and Transworld U.S.A., a wholly owned subsidiary of Kerr-McGee U.S.A., had their home offices in Oklahoma City, and Transworld Bahamas and Kerr-McGee Bahamas, wholly owned subsidiaries of Kerr-McGee U.S.A., both had their *only* operating offices in Oklahoma City (VT Depo I, pp. 5, 6, 10, 16, 87; VT Depo II, pp. 3, 5-7; and see App. 5, Offshore Contractors' Worldwide Directory; Exh. 1 to VT Depo II, App. 10P, Corporate Information furnished by Respondents and see excerpts App. 8 and 9). Transworld Nigeria was a Nigerian corporation which was controlled by its board of directors, all of whom were on the payroll of other Kerr-McGee companies, and all of whom, with the exception of one, were situated in Oklahoma City, where all major decisions with respect to its affairs were made. (VT Depo I, pp. 6-9, 29, 81; VT Depo II, p. 7; Exhs. 2, 3 and 4

to VT Depo II, App. 10P).[5] The officers and directors of all the Kerr-McGee/Transworld companies were interlocking and controlled by about eight people (see Exhs. 1, 2, 3 and 4 to VT Depo I, and see Apps. 10P and 5). The Kerr-McGee subsidiaries were provided with centrally administered accounting, engineering, insurance, pension and retirement, legal, personnel and other services out of the headquarters in Oklahoma City (VT Depo I, pp. 91-95; VT Depo II, pp. 170-180, 182, 186, 190 and 202-205, and see the excerpts in Apps. 8 and 9).

The so-called managing director of Transworld Nigeria was *not* employed by Transworld Nigeria but by Transworld Bahamas, and his employment agreement states that it shall be "construed in accordance with the laws of Oklahoma"; that he would receive all hospitalization, retirement and other fringe benefits that the employees situated in Oklahoma City received, and workmen's compensation benefits in accordance with the laws of the State of Oklahoma (Pltfs. Exh. 17, Depo II, pp. 113, 114; see App. 10G).

According to Von Tungeln, "the only services performed by Transworld (Nigeria) were labor, catering, repairs and maintenance" (VT Depo II, pp. 42, 67-68; Apps. 8 and 9). When asked what decisions were made by Transworld Nigeria, Von Tungeln replied, "I'm not sure it (Transworld Nigeria) makes any executive decisions" (VT Depo I, p. 81).

The minutes of the Board of Directors of Transworld Nigeria (Exh. 12 to VT Depo II) and the documents furnished in Exhs. 9-12 to Deposition II of Von Tungeln

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5. E.g., Von Tungeln testified expressly that Oklahoma City was the "home office for the operating office" for Transworld Drilling Co. and "all the rest of the subsidiaries." (VT Depo I, p. 80, App. 8).

(the telex messages, letters and other communications between Nigeria and Oklahoma City, relating to the operation of Rig 46; see excerpts in Apps. 10H to 10O) disclose that the office in Nigeria was nothing more than a branch or personnel office.[6] The 10-K forms filed by Kerr-McGee U.S.A. reveal that the Kerr-McGee companies did not consider Transworld Nigeria to be a "significant subsidiary" (p. 14, Exh. 18 and see Exh. 19 to Depo II; see App. 10Q). This is understandable since Transworld Nigeria had no assets other than the $2,000.00 per diem receivable for labor and supplies and some minor equipment, such as typewriters (VT Depo I, pp. 80, 81; VT Depo II, p. 36; see Apps. 8 and 9).[7] Transworld Nigeria's only bank accounts in Nigeria were controlled by Americans employed by other Kerr-McGee/Transworld companies based in Oklahoma City (Depo II, pp. 107, 111, 115; Apps. 8 and 9).

Two documents have been attached as appendices as examples of how the Nigerian operation was controlled from the U.S.: Appendix 10F, which contains excerpts from the "General Rules and Standards for Administrative Operations of Transworld Drilling Company Overseas Operations", and Appendix 10-O, a typical telex or cable from Oklahoma City to the Managing Director in Nigeria. They demonstrate clearly that the day-to-day deci-

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6. Indeed, Von Tungeln testified that the Transworld Nigeria Office was considered by the Kerr-McGee companies, and actually operated, as nothing more than a "branch" office (VT Depo II, pp. 86, 87, App. 9).

7. Von Tungeln testified that Transworld Nigeria's paid-in capital consisted of no cash; only "a trailer camp, warehouse, and office furniture and fixtures, and that's it." (VT Depo II, pp. 142, 143, App. 9); that Transworld Nigeria never borrowed any money (id., p. 143, App. 9) and did not do business with anybody but Kerr-McGee Bahamas (id., p. 156, App. 9).

sions were being made in the United States and transmitted to Nigeria by telex or cable.

(3) Facts re Failure of Justice.

The Respondents established by their own officer, Von Tungeln, that the decedent's survivors, under Nigerian law, could receive no more than workmen's compensation benefits (VT Depo II, pp. 193, 200, App. 9; and see App. 11) and that these benefits are grossly inadequate, as demonstrated by App. 11A (Deft's. Exh. 3 to Von Tungeln depo).[8] As stated by Mr. Leggett (App. 11), if Nigerian law is applied, the maximum recovery by Mrs. Chiazor and her children is limited to N3,200, approximately $3,500 U.S. Moreover, Nigeria has no case reporting process and has a very uncertain and tenuous system of justice (App. 11).

The Respondents offered no evidence as to what the procedural, discovery and due process rules are in Nigeria (see entire record) and it was undisputed that none of the Respondents or potential Respondents (Kerr-McGee U.S.A., Transworld U.S.A., Kerr-McGee Bahamas, and Transworld Bahamas),[9] with the exception of Transworld Nigeria, had any business, office, assets or agent for service in Nigeria (VT Depo I, pp. 10, 16, 87, 79-90; VT Depo II, pp. 42-54; and see excerpts of same in Apps. 8 and 9).

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8. This exhibit indicates a total payment, in final satisfaction of the case of a Nigerian seaman who lost his leg, of 2,240 Naira (about $2,250.00 U.S.; the exchange rate is $1.02 to the Naira).

9. In addition to the indemnities between those parties (see Apps. 10A, 10C and 10E) one or more of them could be found to have been the Jones Act employer of the decedent. See *Spinks v. Chevron*, 507 F.2d 216 (5th Cir. 1975).

C. Basis for Federal Jurisdiction in the District Court.

The basis for jurisdiction in the district court was the Jones Act, Death on the High Seas Act and the general maritime law of the United States.

REASONS RELIED ON FOR THE ALLOWANCE OF WRIT

I.

THIS CASE IS OF MOMENTOUS SIGNIFICANCE; THERE IS A DESPERATE NEED FOR THE SUPREME COURT TO RESOLVE AND CLARIFY SERIOUS CONFLICTS BETWEEN THE CIRCUIT COURTS AND IMPORTANT CONSTITUTIONAL AND JONES ACT QUESTIONS THAT HAVE ARISEN OUT OF THE USE BY AMERICAN AND AMERICAN CONTROLLED COMPANIES, IN THE RAPIDLY GROWING OFFSHORE EXPLORATION INDUSTRY, OF THOUSANDS OF FOREIGN SEAMEN.

The number of offshore workers and seamen in the world was estimated in 1980 at 350,000.[10] The percentage of those that are foreign has increased dramatically in the last nine years because of the tremendous shift from domestic offshore drilling to offshore drilling in foreign waters.[11]

Working in offshore petroleum exploration is one of

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10. Blood and Oil, *The Peril of Offshore Petroleum Production,* by Ross Milloy, The Progressive, March 1980.

11. Milloy, Id. In 1962, almost 92 percent of all mobile offshore drilling rigs in the world operated off the American coastline but by 1976 over 64% were operating off foreign coastlines.

the most dangerous occupations in the world.[12] The foreign workers who are injured and their survivors when killed are generally entitled to only token and grossly inadequate compensation benefits in their native countries,[13] while the offshore companies, most of which are American,[14] continue to make tremendous profits from their foreign offshore exploration.[15]

The trend toward greater offshore activity, thus a greater number of foreign seamen who will be directly and vitally affected by the decision in this case, is self-evident. All American seamen will be indirectly affected for the reasons discussed at the Congressional hearings on H.R. 6705; if the foreign seamen are denied access to American law, the adverse effects upon safety and the hiring of American workers (because of the tremendous economic advantages, from a legal standpoint, of hiring non-American seamen) are obvious.[16]

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12. See injury statistics in the Hearings on HR 6705, a Bill to Exclude Foreign Seamen on Offshore Oil Exploration Vessels From the Benefits of the Jones Act, Subcommittee on Merchant Marine of the Committee on Merchant Marine and Fisheries of House of Representatives, Ninety-Sixth Congress, pp. 197-286 of Serial No. 96-39, U.S. Govt. Printing Office. Also Milloy, Id.; the British Medical Association reports that offshore workers' fatalities are ten times greater than in coal mining (previously the most hazardous category).

13. Milloy, Id. and Affidavit of Leggett (as expert on Nigerian law) (see App. 11), and see discussion at pp. 27, 28, infra.

14. Milloy, Id., noted:
"The industry is dominated by American corporations working under subcontracts for the major oil companies. Most of the product is purchased by U.S. multinationals (in various venture combinations), most rigs are owned and operated by American companies, most contracting companies are American-owned, most patents are held by American manufacturers, and most of the machinery is sold by American dealers."

15. Merchant marine hearings, Id., statement by Prof. Jenkins, pp. 260-264; Milloy, Id.

16. Merchant Marine hearings, Id., pp. 262, 263; Milloy, Id.

In the meantime, the courts are in disarray over the handling of the choice-of-law question in Jones Act cases.[17] This question is of threshold importance in Jones Act cases brought by foreign seamen because the American defendants invariably file motions to apply foreign law and then to dismiss on grounds of *forum non conveniens.* All the circuits have consistently held that if the court decides that U.S. law applies, then the court has *no discretion* to dismiss on grounds of *forum non conveniens;* it must deny the *forum non conveniens* motion.[18]

II.

A CONFLICT BETWEEN THE CIRCUIT COURTS HAS ARISEN OVER THE PROCEDURAL HANDLING OF THE FACTUAL ISSUES INCIDENT TO THE CHOICE-OF-LAW QUESTION AT THE PRE-TRIAL STAGE, AND SUCH MATTER URGENTLY NEEDS TO BE CLARIFIED AND RESOLVED.

The Third Circuit, in *Chirinos,* articulates, we submit, the correct approach to a choice-of-law determination at the pre-trial stage. In that Jones Act case involving

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17. A good example of the confusion that has resulted from the approach of the Fifth Circuit can be found in the decisions of three different district courts with regard to three different Nigerian seamen involving basically the same choice-of-law facts. *Ugbone Johnson v. J. Ray McDermott & Company, Inc.,* Cause No. 77-1604, U.S. D.C., S.D. Tex., 1980, see App. 13, where the district court applied Nigerian law; *John Ikesume v. J. Ray McDermott,* Cause No. H-77-1706, U.S.D.C., S.D. Tex., 1980, attached as App. 14, where the district court applied U.S. law; and *Oke v. J. Ray McDermott,* Cause No. S-78-19-CA, U.S.D.C., E.D. Tex., attached as App. 15, where the district court deferred the choice-of-law question.

18. Fifth Circuit: *Fisher v. Agios,* 528 F.2d 308 (5th Cir. 1980); Third Circuit: *Dematcos v. Texaco, Inc.,* 562 F.2d 895 (3rd Cir. 1977) cert. den. 435 U.S. 904 (1978); Second Circuit: *Bartholomew v. Universe Tankships, Inc.; Antypas v. Cia Maritima San Basilio, S.A.,* 541 F.2d 307 (2nd Cir. 1976).

foreign seamen the defendants filed a motion to dismiss for lack of subject matter jurisdiction, for failure to state a claim and on grounds of *forum non conveniens* (precisely the same motions filed in this case). The plaintiffs contended that the subject matter jurisdiction and failure to state a claim motions both turned on whether U.S. or foreign law applied and therefore in accordance with Rule 12(b)(6), F.R.C.P., had to be treated as a motion for summary judgment under Rule 56, F.R.C.P.[18a] The court agreed with plaintiffs and after first noting that the assertion of a claim under the Jones Act was sufficient, in itself, "to empower the District Court to assume jurisdiction over the case and determine whether, in fact, the Act (Jones Act) does provide the claimed rights",[19] stated:

> "The District Court stated that therefore 'the controlling question is whether the Jones Act and the United States general maritime law' are applicable. *"Thus, the District Court's decision was principally concerned with whether the Plaintiffs were entitled relief under United States law, and as such, it was in the nature of a decision on a motion for summary judgment. Therefore, all factual disputes and inferences are to be resolved favorably for the Plaintiffs. Addickes v. S. H. Kress and Co.*, 398 U.S. 144, 158-159, (1970); Wright, *Law of Federal Courts*, Sec-

18a. Rule 12(b)(6) provides that if matters other than the pleadings are presented (such as affidavits, depositions, etc.) then the court must handle the matter "as one for summary judgment . . . disposed of . . . as provided for in Rule 56." Judge Clark "suggested . . . early in the history of the federal rules that the summary judgment motion should encompass and supersede all other motions and become the primary procedure for making objections in advance of the answer." *Federal Practice and Procedure*, Wright and Miller, Vol. 5, Section 1342, p. 508, citing Clark, *Simplified Pleading*, 1942, 2 F.R.D. 456, 27 Iowa L. Rev. 272.

19. Citing *Lauritzen* and *Romero v. International Terminal Operating Co.*, 358 U.S. 354 (1959).

tion 99 (2nd Ed. 1970)." (Emphasis ours, 613 F.2d, pp. 1343-1344).

Judge Van Graafeiland of the Second Circuit, in his dissent in *Antypas v. Cia Maritima San Basilio, S.A.*, 541 F.2d 307 (2nd Cir. 1976), agreed:

> "Although challenges to Jones Act coverage are usually by motion to dismiss for lack of subject matter jurisdiction, Gilmore & Black, The Law of Admiralty, 481 (1975), appellees' motion below was for summary judgment. Whatever the form of the motion, it was not the proper medium for deciding disputed questions of fact. *Bernstein v. Universal Pictures, Inc.*, 517 F.2d 976, 979 (2nd Cir. 1975); *Heyman v. Commerce & Industry Insurance Co.*, 524 F.2d 1319 (2nd Cir. 1975). The facts either warrant the application of the Jones Act or they do not, *Bartholomew v. Universe Tankships, Inc.*, 263 F.2d 437, 443 (2nd Cir.) cert. denied 359 U.S. 1000 (1959); and the resolution of disputed questions of fact is for the trial. *Rodriguez v. Solar Shipping, Ltd.*, 169 F.Supp. 79 (S.D. N.Y. 1958). In my opinion, it is as erroneous to hold, on the basis of disputed pre-trial affidavits, that appellees' duties are fixed by the Jones Act as it would be to hold that they are not." (541 F.2d at p. 311; emphasis ours).[20]

The district court and court of appeals in this case took precisely the opposite approach; they disregarded Rule 12(b)(6) and 56 and utilized their discretion[21] to finally

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20. The majority held that as a matter of law U.S. law applied, but there was nothing in the majority opinion which was contrary to Judge Van Graafeiland's procedural observations.

21. The same approach was taken by the Fifth Circuit in its recent decision in *Ugbone Johnson v. J. Ray McDermott Inc.*, Cause No. 80-3378, 5th Cir. 1981 (unpublished, attached as App. 12). The district court in this (Chiazor) case never mentioned choice-of-law and obviously lumped the two determinations together and used its discretion to resolve both. The court of appeals held that the proper

resolve both motions, even though disputed factual issues were clearly present. While the use of discretion is permissible in resolving a *forum non conveniens* motion,[22] *Gulf Oil v. Gilbert,* 330 U.S. 501 (1953) and *Piper Aircraft Co. v. Reyno,* 50 USLW 4055 (Sup. Ct. Dec. 8, 1981), a choice-of-law determination "is not a matter resting in the discretion of the trial judge." *Bartholomew,* 263 F.2d at p. 443.

In this case, despite its confusing disclaimers,[23] [24] the court of appeals made several "fact findings", such as that Rig 46 was "operated by a Nigerian corporation" (Transworld Nigeria); that the drilling operation "had insignificant operational contacts with the United States;" and that "*all* day-to-day activities were in fact conducted in Nigeria."[25] The record in this case makes it quite obvious

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standard of review of the district court's determinations (forum non conveniens and choice-of-law) was whether the district court's decision "constituted a clear abuse of discretion" (648 F.2d at 1017).

22. As the court of appeals pointed out in its opinion in this case, Mrs. Chiazor did not really seek to retain the case in the United States if Nigerian law was going to be applied. (648 F.2d at p. 1020, footnote 8). That law is so bad, as is pointed out in Appendix 11, that its application would render her cause of action in any court in the world meaningless.

23, 24. The court of appeals stated that it assumed arguendo a "base of operations" in the U.S., but like the proverb, "The Lord giveth, and the Lord taketh away," turned right around and found the integral issues of the base of operations question against the Petitioner. Base of operations is normally a fact question, *Fisher v. Agios,* 628 F.2d 308 (5th Cir.) reh. den. 636 F.2d 1107, as is the question of alter ego, *Davis v. Alexander,* 265 U.S. 115 (1925); *Garden City v. Burden,* 186 F.2d 652 (10th Cir. 1951), another question which the court "stated" it was pretermitting but then proceeded to hold in effect otherwise (obviously, if Transworld Nigeria was the alter ego of Kerr-McGee U.S.A., the substantiality of contacts with the U.S. becomes an inescapable conclusion).

25. 648 F.2d at p. 1018. The correct ultimate issue is simply whether the contacts between the vessel, owner, operator and enterprise in which the vessel is involved and the United States are "substantial". See discussion at pp. 24, 25, infra.

that there exists at least a hotly disputed fact question concerning all these issues.[26] Since such issues were disputed,[27] Respondents' motion to apply Nigerian law and for *forum non conveniens* should have been denied at the pre-trial stage, and the failure of the Fifth Circuit Court of Appeals to so hold constitutes a serious split

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26. Of course, the court of appeals was erroneously approaching these issues as if the district court had been the final arbiter of the facts, with the right, as a jury would have, to accept one version or the other where the evidence is in dispute. But that is the point: there is, without any question, at least "genuine issues of material facts." present here. The Respondents' officers (affidavit of Gillespie, depositions of Von Tungeln, e.g.) make the global assertion that Transworld Nigeria was the "charterer" or "operator" of the rig but when the underlying details of their testimony and Respondents' documents are examined a mountain of evidence accumulates pointing to Kerr-McGee U.S.A. and Transworld Bahamas as the operator of Rig 46: the supervisory officers were employed by Transworld Bahamas; all crew members were paid out of Oklahoma City; all income from the vessel went straight to Oklahoma City; the telexes and correspondence demonstrated that all major, minor and day-to-day decisions were made in Oklahoma City and then telexed or cabled to the vessel; the governing contracts were executed and supervised from Oklahoma City; the drilling contract provided that Kerr-McGee U.S.A. would guarantee the performance of the drilling contract with Gulf; the only bareboat charter that Respondents could produce provided that Transworld Bahamas was the operator of the rig; Respondents stated in worldwide directories that Transworld Bahamas was the operator of Rig 46; and it was undisputed that Transworld Bahamas had its home office and only operating office in Oklahoma City.

27. As emphasized by this Court in *Addickes*, the moving parties (Respondents here) had the heavy burden of showing an absolute absence of a genuine issue as to *any* material fact (398 U.S. at pp. 1609, 1610). Moreover, this Court has further cautioned against summary disposition of cases when "the proof is largely within the hands of the Defendants (proponents)." *Poller v. C.B.S.*, 368 U.S. 464 (1962). In these choice-of-law situations, the defendants create all the relevant facts: the corporate structures, the vessel relationship to those entities; the personnel who control the vessel and the relevant corporate entities and the structure of the enterprise in which the vessel is involved. They generally have in their possession all the evidence pertaining to these matters.

between the circuit courts and amounts to such a departure from the explicit provisions of the Federal Rules of Procedure that the exercise of this Court's power of review is urgently needed.

III.

THE FAILURE TO ALLOW THE PLAINTIFF A TRIAL BY JURY ON THE DISPUTED FACT ISSUES RELEVANT TO THE CHOICE-OF-LAW QUESTION IS CONTRARY TO THE JONES ACT AND VIOLATES THE SEVENTH AMENDMENT.

The Seventh Amendment guaranteeing the right of trial by jury applies to civil cases and is a right so "fundamental and sacred" that it "should be jealously guarded by the Court". *Jacob v. City of New York*, 315 U.S. 752, 753 (1942). As to the Jones Act, which expressly provides the seaman with "the right of a jury trial", in *Ferguson v. Moore-McCormick Lines*, 252 U.S. 521 (1957), this Court held "the jury . . . plays a pre-eminent role in these Jones Act cases".[27a]

In this case, the Petitioners requested a trial by jury. A seaman is just as much entitled to have the jury he has requested pass upon the disputed fact issues incident to the choice-of-law question as he is to have them pass upon the issues of seamen's status,[28] alter ego[29] and mainten-

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27a. In *Hampton v. Magnolia Towing Company*, 338 F.2d 303 (5th Cir. 1964), the court stated that the "Jones Act proffers this right (the right of trial by jury) and we exercise the greatest caution in denying it to any litigant."

28. *Offshore Company v. Robison*, 266 F.2d 769 (5th Cir. 1959), where the court stated:

> "Attempts to fix unvarying meanings have (sic) a firm legal significance to such terms as seaman, vessel, and member of a crew must come to grief on the facts. These terms have such a wide range of meaning, under the Jones Act as interpreted in the courts, that, except in rare cases, only a jury or trier of

ance and cure.[30]

The denial of a jury trial on the fact issues incident to a choice-of-law determination is a clear breach of the Seventh Amendment and the plain language of the Jones Act. If the decision of the court of appeals in this case is allowed to stand, the door would be open to further encroachment upon this sacred right.[31]

IV.

THE CONSISTENT PATTERN OF THE COURTS TO APPLY U.S. LAW TO CASES BROUGHT BY U.S. CITIZENS FOR INJURIES SUSTAINED ON OIL EXPLORATION VESSELS OPERATED OVERSEAS BY AMERICAN CONTROLLED COMPANIES BUT NOT TO APPLY IT TO CASES BROUGHT BY NON-AMERICANS INVOLVING THE SAME CIRCUMSTANCES, IS CONTRARY TO THE JONES ACT AND VIOLATES THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION.

We concede that Mr. Justice Jackson and the Court specified in *Lauritzen* that the nationality of the seaman is a relevant element in deciding the choice-of-law ques-

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facts can determine their application in the circumstances of a particular case."

29. *Davis v. Alexander*, supra, and *Garden City v. Burden*, supra.

30. *Fitzgerald v. U.S.*, 374 U.S. 16 (1963).

31. In *Fitzgerald v. U.S.*, supra, Footnote 30, this Court noted: "Where, as here, a particular mode of trial being used by many judges is so cumbersome, confusing and time consuming that it placed completely unnecessary obstacles in the paths of litigants seeking justice in our Courts, we should not and do not hesitate to take action to correct the situation. Only one trier of fact should be used for the trial of what is essentially one lawsuit to settle one claim split conceptually into separate parts because of historical developments . . . *and the jury, a time-honored institution in our jurisprudence, is the only tribunal . . . to try all the claims*" (374 U.S. at p. 21; emphasis ours).

tion and we are aware that the Court recently, in *Piper Aircraft v. Reyno,* supra, a case involving a non-maritime accident, emphasized the foreign nationality of the plaintiff in connection with a *forum non conveniens* motion. However, we believe that when *the* single distinguishing element between the application or non-application of U.S. law is the fact that the seaman is or is not foreign,[32] then the Equal Protection Clause is violated, and the Jones Act is contravened.

Foreigners are "persons" within the meaning of the Equal Protection Clause of the 14th Amendment. *Graham v. Richardson,* 403 U.S. 365 (1971).[33] The Jones Act provides the same rights to a foreign seaman as it does to an American seaman. *Kyriakos v. Goulandris,* 151 F.2d 132 (2nd Cir. 1945).[34]

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32. We have searched diligently but find no case where an American seaman working on an American controlled rig overseas has been denied American law. The court of appeals in this case stated specifically that the nationality of the seaman was significant (648 F.2d pp. 1018, 1019).

33. And see Farrand, *The Framing of the Constitution* (1913), at 79, 119. As Alexander Hamilton in the *Federalist Papers,* No. 80, so eloquently put it:

> ". . . the federal judiciary ought to have cognizance of all causes in which citizens of other countries are concerned. This is no less essential to the preservation of the public faith than to the security of the public tranquility . . ."

Also see *Sugarman v. Bougall,* 413 U.S. 634 (1973), where a blanket denial of aliens of the right to hold competitive civil service positions was held to violate equal protection guarantees.

34. The court stated:

> "When Congress used the word 'seaman' in the Jones Act it employed a word of general application, embracing men of any nation who sail the seas. Had it wished to limit the application of the statute to seamen of American citizenship or residence, the words to effectuate the limitation were at hand. The legislators did not see fit to use them . . . instead, it appears evident that Congress deliberately chose to leave the word 'seaman' its full and unrestricted meaning applicable to aliens and Americans alike . . ." (id. at p. 137).

As stated by the court of appeals in the *Rhoditis* case,[35] "(m)aritime allegiance is not to be defined in a patriotic, nationalistic or chauvinistic sense, but in terms of economic ties" (412 F.2d at p. 926).[36] This Court should, we submit, exercise its power of review because of the traditional importance of strongly enforcing the Equal Protection Clause[37] and the need to assure the application of the remedial Jones Act to all within its legislatively intended purview, regardless of nationality or race.

V.

THE COURT OF APPEALS DECISION ALSO CONTRAVENES THE JONES ACT WHEREBY IT APPLIES CHOICE-OF-LAW STANDARDS TO OIL DRILLING VESSELS DIFFERENT THAN THOSE IT WOULD APPLY TO BLUE WATER VESSELS AND DISCRIMINATES AGAINST AMERICAN OWNERS OF BLUE WATER VESSELS SINCE THEIR FOREIGN SEAMEN CONTINUE TO HAVE ACCESS TO THE JONES ACT.

The extremely superficial distinction employed by the

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35. 412 F.2d 919, aff'd 398 U.S. 306 (1970).

36. The distinction between American and foreign seamen in the choice-of-law situation is also contrary to the announced policy of the United States in ratifying the Shipowner's Liability (Sick and Injured Seamen) Convention of 1936, which provides in Article XI:

> "This convention and national laws or regulations relating to benefits under this convention shall be so interpreted and enforced as to ensure equality of treatment of *all seamen irrespective of nationality, domicile or race*" (Hearings on H.R. 6705, id. at p. 263).

37. As stated by Prof. Jenkins before the House Subcommittee, the bill offered there, which attempted (unsuccessfully thus far) to legislate precisely what the court of appeals in this case has held, "is a blanket denial to alien workers employed by American companies or on American ships of the same rights enjoyed by their fellow American workers with whom they work side by side and with whom they are subject to the same risks of their hazardous employment". Merchant Marine Hearings, p. 261.

court of appeals in this case and in *Phillips v. Amoco Trinidad Oil Co.*, 632 F.2d 82 (9th Cir. 1980) cert. den. 101 S.Ct. 1999 (1981) between blue water vessels and oil drilling vessels[38] surely results in a punitive and unconstitutional discrimination against owners of blue water vessels. Moreover, there is absolutely nothing in *Lauritzen* or *Rhoditis*, or the Jones Act, which would suggest that this Court or the Congress meant to immunize certain "types" of vessels from the application of those two decisions or the Jones Act itself.[39]

The Fifth and Ninth Circuits have engaged in judicial legislation. Because of the far ranging effect of their holding and apparent conflict with the decisions of the Second Circuit, which would seem to apply *Lauritzen* and *Rhoditis* with equal force to all vessels,[40] the exercise of this Court's power of review is proper and necessary.

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38. The court of appeals in this case stated that the tenets of *Rhoditis* and *Lauritzen* do not apply with the same force to a "submersible drilling rig" as they do to a "true maritime vessel, one plying the seas as an integral part of the shipping industry" (648 F.2d p. 1017).

39. Prof. Jenkins queried:
"What of their 'blue water' counterparts also employing foreign nationals in their crews who will remain liable under the Jones Act . . . By what overriding governmental or judicial necessity should a small segment of the maritime industry be given such an advantage?" (Merchant Marine Subcommittee Hearings on H.R. 6705, supra at p. 262).

40. *Bartholomew, Antypas* and *Moncada v. Lemuria Shipping Corp.*, 491 F.2d 470 (2nd Cir. 1974).

VI.

THE INSISTENCE OF THE COURT OF APPEALS IN THIS CASE AND IN PHILLIPS TO BALANCE THE LAURITZEN - RHODITIS CHOICE - OF - LAW FACTORS, INSTEAD OF APPLYING THE SUBSTANTIALITY TEST, PLACES THE FIFTH AND NINTH CIRCUITS SQUARELY IN CONFLICT WITH THE SECOND CIRCUIT COURT AND SO FAR DEPARTS FROM CLEAR SUPREME COURT LAW THAT THIS COURT SHOULD EXERCISE ITS POWER OF REVIEW.

This Court, in *Rhoditis,* expressly adopted the rule announced in *Bartholomew*:

> "[T]he decisional process of arriving at a conclusion on the subject of the application of the Jones Act involves the ascertainment of the facts or groups of facts which constitute contacts between the transaction involved in the case and the United States, and then deciding whether or not they are substantial. Thus each factor is to be 'weighed' and 'evaluated' only to the end that, after each factor has been given consideration, a rational and satisfactory conclusion may be arrived at on the question of whether all the factors present add up to the necessary substantiality. Moreover, each factor, or contact, or group of facts must be tested in the light of the underlying objective, which is to effectuate the liberal purposes of the Jones Act." (263 F.2d at p. 441).[40a]

The Supreme Court has not overruled *Rhoditis* and *Bartholomew*. Carlson, *The Jones Act and Choice of Law,* 15 International Lawyer, p. 49 et seq. describes the *Bartholomew* test as follows:

40a. Adopted by this Court, 398 U.S. at pp. 308, 309, see footnote.

> ". . . as soon as a substantial contact is found, a Court should stop its deliberations and proceed to apply the Jones Act to the case before it . . . a judge using the *Bartholomew* test need only consider each fact or group of facts constituting an American contact with the transaction to determine whether that contact is substantial; if no single contact is substantial, the judge must then decide whether *the aggregate* of insubstantial contacts adds up to the necessary substantiality. No balancing at all occurs in the *Bartholomew* test." (15 International Lawyer at p. 53, emphasis ours).[41]

The Fifth and Ninth circuit courts have defiantly applied a "balancing" or "preponderance" or "comparative" test,[42] in direct conflict with this Court and the Second circuit.

Such a serious conflict between the circuit courts and departure from the established precedent of this Court calls for this Court's exercise of its power of review.

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41. In *Moncada v. Lemuria Shipping Corp.*, 491 F.2d 420 (2nd Cir. 1974):

> "The majority of contacts enumerated in *Lauritzen* seem to favor the defendants in this case. But as we have indicated above, our task is not to weigh or balance present against absent contacts, but merely to determine whether the contacts which are present are substantial. Thus the Court in *Rhoditis* found for the plaintiff although the majority of contacts favored the defendant." (491 F.2d at p. 472).

42. In this case, the court of appeals expressly noted with approval the district court's finding that "(t)he *majority* of the eight factors (presented in *Lauritzen* and *Rhoditis*) operate in favor of declining jurisdiction over this case," (648 F.2d at 1017, 1018, emphasis ours); and that "the overwhelming *preponderance* of the factors favor the application of Nigerian rather than American law . . ." (648 F.2d at p. 1019, emphasis ours). See *Phillips*, 632 F.2d at p. 88, discussing the "comparative test".

VII.

AN ANALYSIS OF THE LAURITZEN - RHODITIS FACTORS IN THIS CASE ESTABLISHES THAT, AS A MATTER OF LAW, THERE ARE SUBSTANTIAL CONTACTS WITH THE UNITED STATES AND THUS UNITED STATES LAW SHOULD HAVE BEEN APPLIED.

As argued above, most certainly there at least exists a genuine dispute about the material issues incident to the choice-of-law determination. But we now go a step further. We submit that when the *Lauritzen-Rhoditis* factors, and the other factors deemed relevant by other accepted authorities, are considered in the light of the undisputed evidence, the conclusion becomes inescapable that the district court and court of appeals should have held, as a matter of law, that substantial contacts existed, thus:

> (a) *nationality of owner*: American (Kerr-McGee U.S.A.) or American based (Kerr-McGee Bahamas) (pursuant to holding of the court of appeals and see App. 7-A);[43] (b) *flag of the vessel*: No flag but this factor goes to the U.S. where flag is one of convenience or is non-existent and owner is American;[44]

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43. Ownership of the vessel by Americans has been deemed sufficient, in itself, to constitute a "substantial" contact with the United States for the Jones Act to apply. *Bartholomew, Antypas v. Cia Maritima San Basilio, S.A.*, 541 F.2d 307 (2nd Cir. 1976); *Moncada v. Lemuria Shipping Corp.*, supra. In *Bartholomew*, Judge Medina termed "in doubt" the cases which hold that "ownership alone is not enough". See also Vol. 15, International Lawyer 49, Carlson, *The Jones Act and Choice of Law*, at pp. 60-63.

44. Judge Medina in *Bartholomew* put it this way:

> "Although appellant contends otherwise, the practice in this type of case of looking through the facade of foreign registration and incorporation to the American ownership behind it is now well established. . . .
>
> In the case now before us appellant has taken the trouble to insert an additional nominal foreign corporation between the flag and the true beneficial ownership of the vessel. But we have little

(c) *base of operations of owner and/or operator of vessel*: U.S., since the owner (Kerr-McGee U.S.A. or Kerr-McGee Bahamas) is based in U.S. and operator (Transworld Bahamas) is also based in the U.S.;[45] (d) *law of forum*: U.S. law favorable and adequate; (e) *accessibility and availability of remedy in foreign forum*: Nigerian law does not provide an adequate remedy;[46] nor are the Respondents (with the exception of one) amenable to process in Nigeria;[47] and the Respondents failed to prove what

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difficulty in brushing all this aside when considering the applicability *vel non* of the Jones Act. Complicating the mechanics of evasive schemes cannot serve to make them more effective. What we now do is not to disregard the corporate entity to impose liability on the stockholders, but rather to consider a foreign corporation as if it were an American corporation pursuant to the liberal policies of a regulatory act." (263 F.2d at p. 442).

45. This court in *Rhoditis* stated: "(T)he shipowner's base of operations is another factor of importance in determining whether the Jones Act is applicable; and there may well be others . . ." (398 U.S. at p. 309).

46. See App. 11, which establishes together with the testimony of Von Tungeln (App. 9), that the remedy in Nigeria ($4,000 U.S. for a relatively young widow and several children) is so clearly inadequate as to be tantamount to no remedy at all. In the very recent decision of this Court in *Piper Aircraft v. Reyno*, Mr. Justice Marshall, in discussing the comparison of the law of the chosen forum with the law of the suggested foreign forum, in a *forum non conveniens* determination, which is not unlike a comparison of the law of the foreign forum to the law of the chosen forum in a choice-of-law determination, stated:

> "Of course, if the remedy provided by the alternative forum is so *clearly inadequate or unsatisfactory* that it is no remedy at all, the unfavorable change in law may be given substantial weight; the District Court may conclude that dismissal would not be in the interest of justice. . . .
>
> "At the outset of any *forum non conveniens* inquiry, the Court must determine whether there exists an alternative forum. Ordinarily, this requirement will be satisfied when the Defendant is 'amenable to process" in the other jurisdiction. *Gilbert*, 330 U.S. at 506-507. (50 U.S.L.W. at p. 4060, emphasis ours).

47. The district court in this case conditioned its dismissal upon the Respondents submitting themselves to the jurisdiction of the Nigerian court (Apps. 1A, 1B), but this Court, in *Hoffman v. Blaski*, 363 U.S. 335 (1960), condemned the device of artificially inducing

the procedural and due process law of Nigeria was;[48] therefore, this factor favors the application of U.S. law; (f) *place of relevant contracts*: as stated previously, the three relevant contracts, the drilling contract with Gulf Nigeria, the bareboat charter with Transworld Bahamas; and the employment contract with the supervisory personnel of the rig; all three were executed, insofar as the Kerr-McGee/Transworld companies were concerned, in the United States and each called for the application of U.S., Bahamian and U.S. law, respectively; this factor clearly goes to the U.S.;[49] (g) *nationality of seaman*: Mr. Chiazor and his survivors were citizens of Nigeria; however, this element is entitled to little weight;[50] (h) *place of accident*: this accident happened in international waters off the coast of Nigeria, and even if this element is accorded to Nigeria, Mr. Justice Jackson stated in *Lauritzen* that it is also entitled to little weight;[51] (i) *nationality of the offi-*

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transfer to a court other than the one chosen by plaintiff simply by the defendants voluntarily submitting to the jurisdiction of the transferee court. See also *Tivoli Realty, Inc. v. Interstate Circuit, Inc.*, 167 F.2d 175 (5th Cir. 1948) cert. den. 434 U.S. 837; and *Silver v. Country Wide Realty, Inc.*, 39 F.R.D. 596 (D.C.N.Y. 1966), holding "the test is whether the Plaintiff could have brought the action in the foreign forum in the first instance."

48. In *Symonette Shipyards, Ltd. v. Clark*, 365 F.2d 464 (5th Cir. 1966), the court held that where the party seeking to have foreign law applied fails to prove as a fact specifically what that law is, then the court of the chosen forum has no choice but to apply the law of the forum.

49. In *Antypas* the court found that the fact that the contract between the owner and operator of the Marchessini Lines provided for delegation to an American sub-agent was a substantial contact. 541 F.2d at p. 309.

50. This Court stated in *Rhoditis* that: "The flag, the nationality of the seaman, the fact that his employment agreement was Greek, and that he might be compensated there are in the totality of the circumstances of this case, minor weights in the scales compared *with the substantial and continuing contacts that this alien owner has with this country.*" (398 U.S. at p. 310, emphasis ours).

51. It was there stated: "The test of location of the wrongful act or omission, however sufficient for torts ashore, is of limited application to shipboard torts . . ." (345 U.S. at p. 583).

cers of the owner and operator and of the supervisory personnel on the rig: it is undisputed that the relevant officers in Oklahoma City (Romano, Zimmerman, and Gillespie) and on the rig (Cable, etc.) were all Americans, paid by American or American based companies; this element goes to the U.S.;[52] (j) *place of receipt of revenues from the vessel and place from where disbursements are made for expenses of the vessel*: Von Tungeln testified that the revenues from the vessel were received in and the expenses paid out of, the same account in Oklahoma City; this element goes to the United States;[53] (k) *place of advertising vessel and owner*: Von Tungeln also testified that all advertising of the vessel and the Respondents was handled in the U.S.[54]

Since these contacts with the United States are, in the aggregate, so overwhelmingly "substantial",[55] the court of appeals' decision, if left to stand, would nullify *Lauritzen, Rhoditis* and *Bartholomew,* and other Second Circuit

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52. These connecting factors were deemed substantial in *Bartholomew, Moncada* and *Antypas v. Cia Maritima San Basilio, S.A.*, 541 F.2d 308 (2nd Cir. 1976). In *Moncada,* the court noted as a substantial contact: "In addition to those contacts all officers of the defendants are American" (263 F.2d at p. 441).

53. This was considered a substantial contact in *Antypas*: "Moreover, the earnings from the vessel appear to be collected in New York and the expenses of the vessel paid from New York." (541 F.2d at p. 310).

54. Again, *Antypas* deemed this to be a significant contact. (541 F.2d at pp. 309, 310).

55. Obviously, there are many more contacts with the U.S. Especially "substantial" are those manifested by Appendix 10F, the "General Rules and Standards For Administrative Operations Of Transworld Overseas Operations" and the fact that Kerr-McGee U.S.A. remained in control of the Gulf contract, by its very terms, regardless of which subsidiary might have been "substituted" as contracting party. A good illustration of the difference between a bona fide Nigerian corporation (Gulf Nigeria) and an office merely maintained as "a statutory formality" (Transworld Nigeria), can be gleaned from Exhs. 8-12 to VT Depo II and from the testimony of Von Tungeln (excerpts of which are contained in Apps. 8-10).

court decisions and so far departs from Supreme Court precedent as to demonstrate clearly the need for this Court's exercise of its power to review.

CONCLUSION AND PRAYER

We do not understand why many of the district and circuit courts strive so hard to disfranchise these foreign seamen, who perform the same ultrahazardous work as their American fellow crewmen, from the remedial umbrella of the Jones Act. If it is the crowded court dockets that motivates them, then they should be reminded of this Court's fairly recent wise observations in *Reiter v. Sonotone*, 442 U.S. 330 (1979):

> "Respondents also argue that allowing class actions to be brought by retail consumers like the petitioner here will add a significant burden to the already crowded dockets of the federal court. That may well be true but cannot be a controlling consideration here. We must take the statute as we find it . . ."

And this is really all we ask: that this Court grant writ of certiorari in order to eliminate the present confusion in the district courts, reconcile the sharp conflicts between the circuit courts and redirect the energies of so many of our district and circuit courts along the lines that the Constitution prescribes, namely the traditional judicial task of enforcing the statutes (including the Jones Act) as the courts find them and applying the venerable doctrine of *stare decisis* with consistency. What is Congress' responsibility should be left to Congress, and what has been decided by the Supreme Court should be left only to the Supreme Court to change.

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Counsel for Petitioners

Appendix

APPENDIX 1A

Minute Entry
October 29, 1979
Heebe, J.

CIVIL ACTION NO. 78-3433 SECTION B(L)

ALEXANDER CHIAZOR, ET AL

versus

TRANSWORLD DRILLING COMPANY

This case came on for hearing on a previous day on the motions of (1) defendant, Transworld Drilling Company, to dismiss for lack of jurisdiction over the subject matter, for failure to state a claim upon which relief can be granted, or, alternatively, to dismiss on the grounds of *forum non conveniens,* (2) plaintiff, Alexander Chiazor et al, to transfer this action to the Western District of Oklahoma, and (3) defendant, Transworld Drilling Company (Nigeria) Ltd., to dismiss this action for insufficiency of process, for insufficiency of service of process for lack of jurisdiction, or, alternatively, to dismiss on the grounds of *forum non conveniens.*

The Court, having heard the arguments of counsel and having studied the legal memoranda submitted by the parties, is now fully advised in the premises and ready to rule. Accordingly,

IT IS THE ORDER OF THE COURT that the motion of defendant, Transworld Drilling Company, to dismiss on the grounds of *forum non conveniens* be, and the same is hereby, GRANTED, subject to proof of compliance by

the defendant with its undertaking to appear in a foreign forum and to waive any applicable statute of limitations.

IT IS THE FURTHER ORDER OF THE COURT that the motion of plaintiff, Alexander Chiazor et al to transfer this action to the Western District of Oklahoma be, and the same is hereby, DENIED.

IT IS THE FURTHER ORDER OF THE COURT that the motion of defendant, Transworld Drilling Company (Nigeria) Ltd., to dismiss on the grounds of *forum non conveniens* be, and the same is hereby, GRANTED, subject to proof of compliance by the defendant with its undertaking to appear in a foreign forum and to waive any applicable statute of limitations.

REASONS

This action was brought by representatives of decedent Joel Chiazor, under the Jones Act, Death on the High Seas Act, and general maritime law of the United States, to recover damages for his death which allegedly resulted from injuries sustained aboard Kermac-Transworld Rig 46, owned by *Kerr-McGee, Ltd.*, on or about November 13, 1977, while the drilling rig was located offshore of Nigeria. Decedent, a Nigerian citizen, was employed by Dresser Nigeria Ltd. and Dresser Magcobar Minerals Ltd., Nigerian corporations and was working as a mud engineer in the mud pit room of Rig 46 when a flash fire occurred. Decedent allegedly suffered injuries during the fire and died shortly thereafter.

At the time of the incident, the submersible drilling rig was operated by Transworld Drilling Company (Nigeria) Ltd. (hereinafter Transworld Nigeria)), a Nigerian corporation, for the benefit of Gulf Oil (Nigeria)

Ltd., a Nigerian corporation. Transworld (Nigeria) is a wholly owned subsidiary of Transworld Drilling Company Ltd. (Hereinafter Transworld Ltd.), a Bahamian corporation. Transworld Ltd. and Transworld Drilling Company (hereinafter Transworld), an American corporation, are wholly owned subsidiaries of Kerr-McGee, an American corporation with its principal place of business in Oklahoma. Rig 46, submersed offshore of Nigeria, flies no flag and does not move in international waters from port to port.

The doctrine of *forum non conveniens* presupposes at least two available forums with the application of the doctrine being a matter within the Court's discretion. *Gulf Oil v. Gilbert,* 330 U.S. 501 (1947). In *Gulf Oil,* the Court identified factors to be considered when choosing between two available forums, so as to make litigation "easy, expeditious and inexpensive." 330 U.S. at 508. These criteria are:

1. The private interests of the litigants:

   Decedent Joel Chiazor was a Nigerian citizen, who never resided in the United States. Decedent obtained employment with a Nigerian corporation in Nigeria. Decedent was allegedly working on a drilling rig operated by a Nigerian corporation offshore of Nigeria when he sustained his injuries.

2. Relative ease of sources of proof:

   Decedent Joel Chiazor was allegedly injured offshore Nigeria and received medical treatment for his injuries in Nigeria. Thus, the attending medical personnel and presumably the witnesses, if any, are located in Nigeria.

3. Availability of compulsory process:

   Defendant Transworld (Nigeria) is a Nigerian corporation and subject to the jurisdiction of the Nigerian courts. Defendant Transworld does not operate outside the United States. However, the dismissal by this Court is conditioned on agreement by the defendants to submit to the jurisdiction of the Nigerian courts.

4. Cost of obtaining willing witnesses:

   Since most witnesses would be located in Nigeria, it would be less costly for the witnesses to attend trial in Nigeria than in the Eastern District of Louisiana.

5. Possible view of premises, if appropriate:

   Decedent's injury occurred aboard Rig 46, which is submersed in the waters offshore of Nigeria.

The Jones act does not confer a right upon every seaman in the world who suffers an injury in the course of his employment, *Lauritzen v. Larsen,* 345 U.S. 571 (1953), nor does the general maritime law, *Romero v. International Terminal Operation Co.,* 358 U.S. 354 (1954). The question is whether the United States has sufficient interest in the transaction to warrant application of our rules of decision to it. In *Lauritzen* and subsequently in *Hellinic Lines, Ltd. v. Rhoditis,* 398 U.S. 306 (1970), the Court commented on factors to be used by a district court in deciding whether the United States court should accept or decline jurisdiction of a controversy which was essentially foreign. These factors are instructive to this Court in its examination of the *forum non conveniens* doctrine in that these factors attempt to

identify substantial contacts a given action may have with the United States. The factors are:

1. The place of the wrongful act:

   The injuries of decedent occurred offshore of Nigeria.

2. The flag:

   Rig 46 flies no flag.

3. The allegiance or domicile of the injured:

   Decedent Joel Chiazor is a Nigerian citizen.

4. The allegiance of the shipowner:

   Transworld (Nigeria) is a Nigerian corporation. Kerr-McGee is an American corporation. In this action the owner and operator are separate entities.

5. The place of any contract governing the transaction:

   Rig 46 was being operated by Transworld (Nigeria) for the benefit of Gulf Oil (Nigeria) Ltd. Decedent was employed by Dresser Nigeria Ltd. and Dresser Magcobar Minerals Ltd. All corporations were Nigerian corporations and any contracts undoubtedly took place in Nigeria.

6. The inaccessibility of a possible foreign forum:

   The dismissal by this Court is conditioned on an agreement by the defendants to submit to the jurisdiction of the Nigerian courts and to waive any statute of limitations.

7. The law of the forum:

   Transworld (Nigeria) does business in Nigeria. Transworld does business only in the United States.

8. The shipowner's base of operations:

   The shipowner and operator are separate entities. Transworld (Nigeria) operates out of Nigeria, while Kerr-McGee operates out of the United States.

The majority of the eight factors operate in favor of declining jurisdiction over this case. There has been no positive showing that Transworld (Nigeria) is a "sham" subsidiary incorporated for the purpose of permitting Kerr-McGee to evade the maritime laws of the United States, *DeMateos v. Texaco, Inc.*, 562 F.2d 895 (3rd Cir. 1977). The Court does not consider the contacts of Kerr-McGee with the United States, but rather considers Transworld (Nigeria) as a separate entity.

The Court concludes that the practical convenience of conducting the trial in Nigeria outweighs the matters concerning ownership and corporate matters, and hereby grants the defendants' motions to dismiss on the grounds of *forum non conveniens.*

/s/ FREDERICK J. R. HEEBE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ALEXANDER CHIAZOR, COMFORT CHIAZOR, ROBERT CHIAZOR, MABEL OWENMUEZOR, SUNDAY CHIAZOR, EMEKA CHIAZOR, JOSEPH CHIAZOR, GIDEON CHIAZOR, VICTOR CHIAZOR, JAMES CHIAZOR, and GRACE CHIAZOR, Individually and as Representatives of the Estate of Joel Onochie Chiazor, Deceased.

Versus

TRANSWORLD DRILLING COMPANY

JUDGMENT

The Court in its Minute Entry & ORDER of October 29, 1979, Granted the Motion of defendants, Transworld Drilling Company and Transworld Drilling Company (Nigeria) Ltd., to Dismiss on the grounds of *forum non conveniens,* therefore:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of the defendants, Transworld Drilling Company and Transworld Drilling Company (Nigeria), Ltd., and against plaintiffs' Alexander Chiazor, Comfort Chiazor, Robert Chiazor, Mabel Owenmuezor, Sunday Chiazor, Emeka Chiazor, Joseph Chiazor, Gideon Chiazor, Victor Chiazor, James Chiazor and Grace Chiazor, Individually and as Representatives of the Estate of Joel Onochie Chiazor, Deceased, dismissing said plaintiffs' suit with prejudice, subject to the defendants, Transworld Drilling Company and Transworld Drilling Company (Nigeria), Ltd. proof of compliance with their undertaking to appear in a foreign forum and to waive any applicable statute of limitations.

Dated this 5th day of November, 1979, at New Orleans, Louisiana.

/s/ FREDERICK HEEBE
United States District Judge

APPENDIX 1B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

NO. 78-3433

CIVIL ACTION
SECTION "L"

ALEXANDER CHIAZOR, ET AL

versus

TRANSWORLD DRILLING CO., ET AL

WEDNESDAY January 9, 1980 10:00 AM

ATTORNEYS PRESENT:

Louis R. Koerner, Jr.
Christopher Tompkins
Cynthia Norris

MOTION OF Plaintiffs for Reconsideration

ARGUMENT

RULING: DENIED

APPENDIX 2

Alexander CHIAZOR, et al.,
Plaintiffs-Appellants,

v.

TRANSWORLD DRILLING COMPANY, LTD., et al.,
Defendants-Appellees.

No. 80-3088

UNITED STATES COURT OF APPEALS
Fifth Circuit

June 23, 1981

Rehearing and Rehearing En Banc
Denied Sept. 23, 1981

Representatives of decedent brought suit under Jones Act, Death on the High Seas Act, and general maritime law of the United States for damages for death of decedent who died as a result of injuries received while working on submersible drilling rig off Nigerian coast. The United States District Court for the Eastern District of Louisiana, at New Orleans, Frederick J. R. Heebe, J., dismissed complaint on ground of forum non conveniens, and plaintiff appealed. The Court of Appeals, Tate, Circuit Judge, held that: (1) district court did not err in determining that Nigerian law applied, and (2) district court did not abuse its discretion in dismissing action on ground of forum non conveniens.

Affirmed.

Benton Musslewhite, Houston, Tex., for plaintiffs-appellants.

Christopher Tompkins, New Orleans, La., for defendants-appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before BROWN and TATE, Circuit Judges, and SMITH,* District Judge.

TATE, Circuit Judge:

The decedent, Joel Chiazor, died as a result of injuries he received while working on a submersible drilling rig off the Nigerian coast. His representatives brought suit against the owner of the rig under the Jones Act, the Death on the High Seas Act, and the general maritime law of the United States. The district court dismissed the complaint on the ground of *forum non conveniens,* and the plaintiffs appealed. Because we find that the district court did not abuse its discretion in so dismissing, we affirm.

Facts

Joel Chiazor, a Nigerian citizen employed by Dresser Nigeria Ltd. and/or Dresser Magcobar Minerals Ltd. (both Nigerian corporations), was injured while working as a mud engineer on Kermac-Transworld Rig 46 while the submersible rig was located off the coast of Nigeria.

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* District Judge of the Northern District of Mississippi, sitting by designation. Judge Orma R. Smith was a member of the panel that heard oral arguments but due to illness did not participate in this decision. The case is being decided by a quorum. 28 U.S.C. 46(d).

He soon thereafter died from these injuries. The plaintiffs argue that the decedent was a borrowed employee of the operator of the rig, a contention we accept for purposes of our decision.

Rig 46 was being operated at the time of Chiazor's fatal injury by Transworld Drilling Company (Nigeria) Ltd. [hereinafter referred to as Transworld Nigeria], a Nigerian Corporation. Transworld Nigeria is a wholly owned subsidiary of Transworld Drilling Company Ltd. [hereinafter Transworld Bahamas], a Bahamian corporation. Kerr-McGee, Ltd., a Bahamian corporation [hereinafter Kerr-McGee Bahamas], was the owner of Rig 46.[1] It had bareboat chartered the rig to Transworld Bahamas, who in turn allegedly chartered it to Transworld Nigeria.[2] See note 4.

Representatives of the decedent Chiazor brought suit under the Jones Act, DOHSA, and the general maritime law of the United States against both Transworld USA and Transworld Nigeria in the Eastern District of Louisiana. The defendants then sought dismissal on the ground of *forum non conveniens,* inter alia, noting that the decedent was a Nigerian citizen, he worked for a Nigerian corporation(s), one of the alleged tortfeasors (Trans-

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1. Transworld Bahamas, Kerr-McGee Bahamas, and Transworld Drilling Company, a Delaware Corporation [hereinafter Transworld USA], are wholly owned subsidiaries of the Kerr-McGee Corporation, a Delaware corporation with its principal place of business in Oklahoma City.

2. The plaintiffs assert that Rig 46 had not been chartered to Transworld Nigeria. (They raise this issue to help substantiate their contention that the shipowner's base of operations was in the United States.) We need not discuss the issue of proper charter parties, for we will assume for the purposes of this decision that the shipowner's base of operations was in the U.S.

world Nigeria) was a Nigerian corporation, and the accident occurred off the coast of Nigeria.

After carefully analyzing the facts of this case with the *forum non conveniens* guideposts enunciated in *Gulf Oil Corporation v. Gilbert,* 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1947), the district court dismissed the plaintiff's complaint on this basis. In arriving at this decision, the district court also considered the factors presented in *Lauritzen v. Larsen,* 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed 1254 (1953) and *Hellenic Lines, Ltd. v. Rhoditis,* 398 U.S. 306, 90 S.Ct. 1731, 26 L.Ed.2d 252 (1970), in ascertaining whether or not American law should apply to this controversy.[3] The district court found that "[t]he majority of the eight factors [presented in Lauritzen and Rhoditis] operate in favor of declining jurisdiction over this case."

Issues:

[1] An appellate court may reverse the decision of a district court on a motion to dismiss on *forum non conveniens* only if it constituted a clear abuse of discretion. *Fisher v. Agios Nicolaos V,* 628 F.2d 308, rehearing and rehearing en banc denied, 636 F.2d 1107 (5th Cir. 1980) appeal pending, No. 80-1810 (filed May 8, 1981); *Fitzgerald v. Texaco, Inc.,* 521 F.2d 448, 451 (2nd Cir.

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3. *Lauritzen* noted seven factors as significant for consideration in determining the applicable law in an admiralty context: (1) Place of wrongful act; (2) Law of the flag; (3) Allegiance or domicile of the injured; (4) Allegiance of defendant shipowner; (5) Place of the contract; (6) Inaccessibility of foreign forum; and (7) Law of the forum.

Rhoditis expanded on these seven factors by noting an eighth factor of importance, the shipowner's base of operations.

1975), *cert. denied,* 423 U.S. 1052, 96 S.Ct. 781, 46 L.Ed.2d 641 (1976).

On appeal, the plaintiffs assert that the district court abused its discretion in dismissing on *forum non conveniens,* in that (1) the district court failed to determine whether Nigerian or American law applied (thus necessitating a remand) and (2) the defendants failed to carry their heavy burden in establishing that an injustice would follow if jurisdiction were retained, *see Poseidon Schiffahrt, G.M.B.H. v. The M/S Netuno,* 474 F.2d 203, 205 (5th Cir. 1973).

We disagree.

American or Nigerian Law?

[2, 3] In *Fisher v. Agios Nicolaos V,* supra, this court established that, prior to dismissing a case for *forum non conveniens,* a district court should ascertain if American or foreign law is applicable. If American law is applicable, then the American court should retain jurisdiction. See *Fisher v. Agios Nicolaos V,* 628 F.2d at 315; *DeMateos v. Texaco, Inc.,* 562 F.2d 895, 899-900 (3d Cir. 1977), *cert. denied,* 435 U.S. 904, 98 S.Ct. 1449, 55 L.Ed.2d 494 (1978); *Antypas v. Cia. Maritina San Basilio, S.A.,* 541 F.2d 307 (2nd Cir. 1976), *cert. denied,* 429 U.S. 1098, 97 S.Ct. 1116, 51 L.Ed.2d 545 (1977); *Bartholomew v. Universe Tankships, Inc.,* 263 F.2d 437, 443 (2d Cir.), *cert. denied,* 359 U.S. 1000, 79 S.Ct. 1138, 3 L.Ed.2d 1030 (1959); *Allan v. Brown and Root, Inc.,* 491 F.Supp. 398, 403 (S.D. Tex. 1980). Only when it is determined that foreign law applies is it appropriate to consider the *forum non conveniens* factors listed in *Gilbert Oil Corporation* in determining

whether to retain jurisdiction acquired over a maritime suit with foreign factors. *Fisher v. Agios Nicolaos V*, 628 F.2d at 315; *DeMateos v. Texaco, Inc., supra.*

The appellants assert that the district court abused its discretion in dismissing for *forum non conveniens* without first having determined which nation's law is applicable, and therefore suggest that we remand for this determination. We find this unnecessary for, in determining whether or not to retain jurisdiction, the district court correctly addressed the choice of law issue in reaching its decision. Although the district court did not directly state that American law was not applicable, this is the only logical conclusion to be drawn from the court's statement that "[t]he majority of [Lauritzen's and Rhoditis's] eight [choice of law] factors operate in favor if declining jurisdiction over this case."

The plaintiffs-Appellants are essentially contending that the district court, when deciding the appropriate choice of law, erred in finding that the shipowner's base of operations was in Nigeria. They urge that we should disentangle the corporate structure here involved and find that the true base of operations for Transworld Nigeria (the operator of Rig 46) is in Oklahoma City, the principal place of business for Transworld Nigeria's parent corporation, Kerr-McGee U.S.A.[4]

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4. A deposition of Jerry Von Tungeln, the comptroller of Transworld USA, was taken on March 30, 1979 [Von Tungeln Dep. I], in the case of *Erhurare v. Transworld Drilling Co.*, No. 78-20-C.A., Eastern District Texas, for the additional purpose of this proceeding. The plaintiffs urge us on appeal to consider a second deposition of Jerry Von Tungeln, taken on February 5, 1980. They offer this deposition to establish the corporate make-up of Kerr-McGee USA, the parent company of its wholly-owned subsidiary, Transworld Ni-

[4] We pretermit discussion of whether or not Transworld Nigeria was a legitimate corporation with its base in Nigeria, or was a sham corporation with its actual control emanating from Oklahoma City, for, even assuming a U.S. base of operations, the substantiality of the contacts herein with Nigeria warrants the non-application of American law.[5] We are unable to state, and *Rhoditis* in fact does not command us to hold, that the shipowner's base of operations is the sole controlling factor in a choice-of-law decision. *Hellenic Line, Ltd. v. Rhoditis,* 398 U.S. at 308, 90 S.Ct. at 1734 (1970). Hence, while certain of the eight (Lauritzen and Rhoditis) factors may be substantial in one context, they may be of lesser importance in another. Thus, in *Rhoditis,* in which the Court was concerned with a true maritime vessel, one plying the seas as an integral part of the shipping industry, the shipowner's base-of-operations was considered one substantial contact, inter alia.

However, here we are faced with a "vessel" (a submersible drilling rig) that has been permanently stationed off the coast of Nigeria since 1964. (Von Tungeln Dep. I, p. 97). Hence, such factors as place of wrongful act,

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geria. Such evidence is essential in showing that the shipowner's base-of-operations here is in the United States.

We need not rule on whether or not we may consider this deposition because, for our purpose here, we will assume that Kerr-McGee USA is the ultimate owner and the shipowner's base-of-operations is in the United States.

5. Two other circuits have recently rejected the application of American law under circumstances similar to those before us. See *Phillips v. Amoco Trinidad Oil Co.,* 632 F.2d 82 (9th Cir. 1980), *cert. denied,* ____U.S.____, 101 S.Ct. 1999, 68 L.Ed.2d 312 (1981); *Chirinos de Alvarez v. Creole Petroleum Corp.,* 613 F.2d 1240 (3rd Cir. 1980). See also *Dos Santos v. Reading & Bates Drilling Co.,* 495 F.Supp. 843 (E.D. La. 1980).

allegiance or domicile of the injured, and place of contract, which may be less substantial in the shipping context, tend to take on added significance under the present circumstances.

When viewed in this light, it cannot be said that the district court erred in finding there were substantial contacts with Nigeria, rather than the United States. The decedent was a Nigerian citizen, he was employed by Nigerian corporations, the accident occurred off the coast of Nigeria, the "vessel" has been stationed off Nigeria since 1964, and the plaintiffs are all Nigerian citizens. As in *Lauritzen, supra,* the overwhelming preponderance of the factors favor the application of Nigerian rather than American law as governing the employment and accident in question.

The American-owned Nigerian subsidiary conducting the enterprise might possibly be said to have a base of operations in America, it is true, but, unlike in *Rhoditis, supra,* the totality of the circumstances of the case indicate this to be a minor weight in the scales. Here, the work performed by the Nigerian employer corporation in the operation and servicing of its drilling rig off Nigerian waters—albeit it was an American-owned subsidiary of American interests with primary decisions made by American corporate officers in America—had insignificant operational contacts with the United States; and all day-to-day operating activities were in fact conducted in Nigeria. Nor can it be said, with regard to the Nigerian employee decedent, that any Jones Act or other American-originating obligations of the American-owners of the foreign subsidiary were evaded by the use of the American-owned Nigerian subsidiary to conduct operations in

Nigeria through Nigerian employees; the use of a foreign subsidiary under such circumstances simply does not involve anty evasion of American law otherwise applicable.

Dismissal for Forum Non Conveniens

Gulf Oil Corporation v. Gilbert, supra, is the fountainhead decision in determining whether or not a case should be dismissed for *forum non conveniens.* There, the Court listed such factors as the (1) private interests of the litigants, (2) relative ease of access to sources of proof, (3) availability of compulsory process, (4) cost of obtaining attendance of willing witnesses, and (5) the possibility of view of the premises.[6]

---

6. The district court analyzed these criteria in the following manner:

1. The private interests of the litigants:
Decedent Joel Chiazor was a Nigerian citizen, who never resided in the United States. Decedent obtained employment with a Nigerian corporation in Nigeria. Decedent was allegedly working on a drilling rig operated by a Nigerian corporation offshore of Nigeria when he sustained his injuries.
2. Relative ease of sources of proof:
Decedent Joel Chiazor was allegedly injured offshore Nigeria and received medical treatment for his injuries in Nigeria. Thus, the attending medical personnel and presumably the witnesses, if any, are located in Nigeria.
3. Availability of compulsory process:
Defendant Transworld (Nigeria) is a Nigerian corporation and subject to the jurisdiction of the Nigerian courts. Defendant Transworld does not operate outside the United States. However, the dismissal by this Court is conditioned on agreement by the defendants to submit to the jurisdiction of the Nigerian courts.
4. Cost of obtaining willing witnesses:
Since most witnesses would be located in Nigeria, it would be less costly for the witnesses to attend trial in Nigeria than in the Eastern District of Louisiana.
5. Possible view of premises, if appropriate:
Decedent's injury occurred aboard Rig 46, which is submersed in the waters offshore of Nigeria.

[5] The *Gilbert* court, however, went on to say that "unless the balance is strongly in favor of the defendant the plaintiff's choice of forum should rarely be disturbed." *Gulf Oil Corporation v. Gilbert, supra.* And, as we are reminded by the appellants, "a court must begin with the assumption it will exercise jurisdiction unless it is established, by the defendant, that an injustice would follow." *Poseidon Schiffahrt, G.M.B.H. v. The M/S Netuno,* 474 F.2d at 205 (5th Cir. 1973).

[6] We agree with the district court's dismissal for *forum non conveniens,*[7] for the balance is strongly in favor of the defendants and an injustice would follow had the district court retained jurisdiction. Here, the district court would have had to apply (1) Nigerian law to a case (2) initiated by Nigerian plaintiffs (3) for the death of a Nigerian oil worker (4) injured off the coast of Nigeria (5) who received medical care in Nigeria, (6) with most of the witnesses located in Nigeria.

The plaintiffs further aver that dismissal on the ground of *forum non conveniens* was impermissible because it was not established that either (1) the defendants are amenable to process or (2) an adequate remedy is available.

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7. The plaintiffs here asserted a claim based only upon the Jones Act, DOHSA, and the general maritime law of the United States; they failed to assert a claim under Nigerian law. Once the district court determined that American law was not applicable, it could have properly dismissed the case pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted, and if deposition and affidavits were considered, have granted a summary judgment under Rule 56. See *de Alvarez v. Creole Petroleum Corp.,* 613 F.2d 1240 (3rd Cir. 1980). See also H. Watson, Applicable Law in Suits by Foreign Offshore Oil Workers, 41 La. L.R., 827, 828-29 (1981).

[7] We disagree with both contentions. The district court specifically conditioned its grant of dismissal "on an agreement by the defendants to submit to the jurisdiction of the Nigerian courts and to waive any statute of limitation." And, in regard to the availability of an adequate remedy, we should note that, even had the district court retained jurisdiction, it would have had to apply Nigerian law.[8]

Conclusion

Because we find that the district court did not abuse its discretion in dismissing for *forum non conveniens,* we therefore AFFIRM.

AFFIRMED.

8. The plaintiffs-appellants do not suggest anywhere in the record or in appellate brief that the district court should have retained jurisdiction if Nigerian law were to apply. Their sole argument was that dismissal for *forum non conveniens* was inappropriate if American law were to apply.

APPENDIX 3

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNIT A

NO. 80-3088

ALEXANDER CHIAZOR, ET AL.,
Plaintiffs-Appellants,

versus

TRANSWORLD DRILLING COMPANY,
LTD., ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Louisiana

ON PETITION FOR REHEARING AND
SUGGESTION FOR REHEARING EN BANC

(Opinion June 23, 1981, 5 Cir., 1981, ____F.2d____).

(SEPTEMBER 23, 1981)

Before BROWN and TATE, Circuit Judges, and SMITH,* District Judge.

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* District Judge of the Northern District of Mississippi, sitting by designation. Judge Orma R. Smith was a member of the panel that heard oral arguments but due to illness did not participate in this decision. The case is being decided by a quorum. 28 USC 46(d).

PER CURIAM:

The Petition for Rehearing is DENIED and no member of this panel nor Judge of this Administrative Unit in regular active service having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16; Fifth Circuit Judicial Council Resolution of January 14, 1981), the suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ ALBERT TATE
United States Circuit Judge

APPENDIX 4A

46 U.S.C. § 688. Recovery for injury to or death of seaman

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

Mar. 4, 1915, c. 153, § 20, 38 Stat. 1185; June 5, 1920, c. 250 § 33, 41 Stat. 1007.

APPENDIX 4B

45 U.S.C. § 56. Actions; limitations; concurrent jurisdiction of courts

No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued.

Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the Courts of the United States under this chapter shall be concurrent with that of the courts of the several States.

Apr. 22, 1908, c. 149, § 6, 35 Stat. 66; Apr. 5, 1910, c. 143, § 1, 36 Stat. 291; Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167; Aug. 11, 1939, c. 685, § 2, 53 Stat. 1404; June 25, 1948, c. 646, § 18, 62 Stat. 989.

APPENDIX 4C

46 U.S.C. § 761. Right of action; where and by whom brought

Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued.

Mar. 30, 1920, c. 111, § 1, 41 Stat. 537.

APPENDIX 4D

Rule 12.

* * *

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

* * *

APPENDIX 4E

Federal Rules of Civil Procedure

Rule 56. Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

* * *

APPENDIX 4F

Amendment VII—Civil Trials

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

* * *

APPENDIX 4G

Amendment XIV—Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX 5

REGISTER OF
OFFSHORE UNITS
SUBMERSIBLES
& DIVING SYSTEMS
1980-81

LLOYD'S REGISTER OF SHIPPING

COLUMN 1

NAME as painted on unit TRANSWORLD RIG 46
former names exKermac Rig 46
Type (qualifications) Submersible Barge (cantilever type)
Registered owners Transworld Drilling Company

Lloyd's Register classification symbols — Latest Special Survey recorded
class notation, and service limits whether assigned by Lloyd's Register or not
Other classification societies' initials
Statutory certification
Flag — Port of Registry
Official No. — Call sign
Gross tons — Net tons

COLUMN 2

Date of build Builders—Place of build
(Conversion details)
Platform/Hull shape and dimensions—length x max. beam x depth:draught
Heliport dimensions — Quarters
Legs/Columns/Pontoons—shape, number and dimensions
Jacking mechanism
Spud tanks/Mat support dimensions

Mooring system—anchors and anchor chains or wires, or dynamic positioning
Diving system
Safety equipment
Drilling location

1956 Ingalls Shipbuilding Corp.—Pascagoula, Ms.
Platform (rectangular): 242′ × 202′ × 100′; transit draught 10′
Heliport: For Sikorsky S-58 Quarters: 42 Regular 50 auxillary
Columns: 4 of 22′ diameter & 2 of 10′ diameter
Mooring: 4 × 6 000 lb LWT anchors
Diving: None
Drilling in Nigerian waters

COLUMN 3

Cranes/Derricks—No. and safe working load
Tank capacities
Total pipe carrying capacities
Riser
Compensator
Cementing unit
Water depth Drill depth
Maximum variable deckload

Cranes: 1 × 30 tons at 50′
1 × 15 tons at 50′
Fuel 33,260 gallons
Water (drill) 3,950 bbls
(potable) 780 bbls
Mud (active) 800 bbls
(reserve) 500 bbls
(bulk) 5,460 sacks
Cement 2,500 sacks
Riser: None
Compensator: None
Cementing unit: Haliburton Twin T-10 AC
Water depth: 70′ Drill depth: 20,000′

COLUMN 4

Derrick—make, dimensions and rating
Drawworks
Rotary
Mud pumps
Blowout preventor stack
Engines—No., type and total power
Electrical generators
(Converters)
Propulsion and/or Positioning system
Other equipment

Derrick (Mast):Ideco Full View 143′ 750,000 lb
Hook load
Drawworks: Continental-Emsco EDA 4-60
Rotary: Continental-Emsco 27 1/2″
Mud pumps: 2×Continental-Emsco D-1000
BOP stack: 1×Hydril 20″ 2,000 psi
1×Hydril 13 5/8″ 5,000 psi
3×Cameron U 13 5/8″ 5,000 psi
1×Hydril 10″ 5,000 psi
3×Cameron 10″ 5,000 psi
Engines: 3×General Motors EMD 8-567CR
Elec. gens.: 6×500 kW d.c. (drilling)
3×350 kW a.c. (domestic)
Other equip.: Radio telephone

A-34

1980

Worldwide Directory

OFFSHORE CONTRACTORS AND EQUIPMENT

* * *

60—DRILLING

TRANSWORLD DRILLING CO.
TRANSWORLD DRILLING CO., LTD.
TRANSOCEAN DRILLING CO., LTD.
Kerr-McGee Center
Oklahoma City, OK 73125
Ph: 405-270-1313
Telex: 747128
Cable: TRANSWORLD

Transworld Drilling Company was formed in 1966 as a 100% subsidiary of Kerr-McGee Corporation to perform domestic offshore contract drilling operations. Transworld Drilling, Ltd., also a wholly-owned subsidiary of Kerr-McGee, was created to conduct offshore contract drilling operations outside the United States. They operate a fleet of 18 offshore mobile drilling units. Another affiliate, Transocean Drilling Company, Ltd., is owned 51% by Transworld Drilling Company, Ltd. and 49% by 4 West German companies. The West German companies are Deutsche Schachtbau und Tiefbohrgesellschaft mgH, Preussag Aktiengesellchaft, C. Dielman AG, and Wintershall Aktiengesellschaft. Transocean owns 5 offshore mobile drilling units.

P. D. Romano—President
H. C. Hanna—Executive Vice President
J. E. Gillespie—Vice President, Operations
J. W. Cox—Vice President, Engineering
J. F. Von Tungeln—Controller
R. T. Carter—Executive Assistant

Operations

M. H. Bender—Operations Assistant
M. L. Burnette—Senior Staff Engineer
H. G. Kuhlman—Superintendent, Maintenance & Supply
C. L. Woody—Superintendent Engineer
W. A. Munter—Superintendent Engineering

Marine Engineering & Construction

J. E. Ingle—Manager, Marine Engineering and Construction
T. V. Yu—Senior Staff Design Engineer
B. G. Malcolm—Senior Staff Engineer

Engineering

J. D. Potter—Senior Staff Engineer
J. C. Neale—Senior Staff Engineer

Contracts for Domestic Offshore
Transworld Drilling Company
Suite 2460, Transco Tower, 2700 South Post Oak Road
Houston, TX 77056
Ph: 713-629-0720

E. E. Parks—Manager Domestic Offshore Contracts
W. C. Savage—Manager Offshore Sales

* * *

Transworld Drilling Company, Limited
(A subsidiary of Kerr-McGee Corporation)
330 Bay Street, P. O. Box 1447
Nassau, Bahamas
Kerr-McGee Center
Oklahoma City, OK 73125
(Management Personnel same as Transworld Drilling Company)

* * *

Equipment:

Transworld Rig 44—Submersible with 2 Pontoons
Transworld Rig 45—Submersible with 2 Pontoons
Transworld Rig 46—Submersible with 4 Columns
Transworld Rig 47—Submersible with 4 Columns
Transworld Rig 50—Mat-type Jackup with 3 Cylindrical Legs
Transworld Rig 54—Submersible with 3 Columns
Transworld Rig 56—Self-contained Platform Rig
Transworld Rig 58—Semisubmersible with 4 Colums
Transworld Rig 59—Mat-type Jackup with 3 Cylindrical Legs
Transworld Rig 61—Semisubmersible with 4 Self-elevating Column Stabilization Legs
Transworld Rig 62—Mat-type Jackup with 3 Lattice Legs
Transworld Rig 63—Mat-type Jackup with 3 Cylindrical Legs
Transworld Rig 64—Jackup with 3 Independent Lattice Legs
Transworld Rig 65—Submersible with 3 Bottle Columns
Transworld Rig 68—Submersible with 3 Bottle Columns
Transworld Rig 69—Submersible with 3 Bottle Columns (scheduled completion 1981)
Transworld Rig 70—Submersible with 3 Bottle Columns (scheduled completion 1981)
Transworld Rig 71—Mat-type Jackup with 3 Cylindrical Legs (scheduled completion 1981)

* * *

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Transworld Rig 46—Submersible w/4 bottle columns, rectangular hull
Company: Transworld Drilling Co., Ltd.
Water Depth: 70′
Rated Drilling Depth: 20,000′
Drawworks: Continental-Emsco EDA 4-60
Pumps: 2 Continental-Emsco D-1000
Power: 3 GM EMD 8-567CR diesel engines
Year Built: 1956
Shipyard: Ingalls Shipbuilding, Pascagoula, MS

* * *

APPENDIX 6

FIRST JURISDICTIONAL INTERROGATORIES AND REQUEST FOR PRODUCTION

TO: Transworld Drilling Company through their attorney,

Interrogatory

12. Please "identify" the owner or owners of the Kermac Transworld Rig 46.

* * *

Answer

12. Kerr-McGee, Ltd.

* * *

APPENDIX 7A

INTERROGATORIES AND REQUESTS FOR PRODUCTION

TO: Transworld Drilling Co. (Nigeria) Ltd.

Interrogatories

14. Please "identify" the Kermac Transworld Rig 46, type of vessel, manufacturer, port of registry in March, 1977, and present location, and please state the following:

* * *

c. "identify" the owner and operator on March 13, 1977;

* * *

Answer

14(c) The owner was *Kerr-McGee, Inc.* and the rig was being operated by defendant under the terms of the Bare-Boat Charter and Operation of Drilling Unit Agreement, copy of which has been shown to plaintiff's counsel.

* * *

Interrogatories

33. Please "identify" all persons, firms, and/or corporations who have acted on behalf of Defendant as manager or "coordinator" in the United States

* * *

Answer

33. Paul D. Romano and John E. Gillespie may come within the purview of this interrogatory.

* * *

Interrogatories

42. Please "identify" all ships or other vessels owned, operated, chartered or controlled by Defendant (Transworld Nigeria) in any way,

* * *

Answer

42. None.

* * *

APPENDIX 7B

AFFIDAVIT

STATE OF OKLAHOMA

COUNTY OF OKLAHOMA

BEFORE ME, the undersigned authority, personally came and appeared:

JOHN E. GILLESPIE

who, after being by me duly sworn, did depose and state:

He is a director of Transworld Drilling Company (Nigeria), Ltd.; that he is familiar with the operation of that concern

* * *

the aforesaid Rig No. 46, not being considered a vessel, was not registered in any country and was not operating under any flag;

* * *

/s/ JOHN E. GILLESPIE
John E. Gillespie

APPENDIX 8

DEPOSITION I OF JERRY VON TUNGELN

[2]

* * *

JERRY VON TUNGELN, 8016 Golden Oaks, Oklahoma City, Oklahoma, a witness named in the above stipulation, being first duly sworn in the cause, testified on his oath as follows:

BY MR. MUSSLEWHITE:

Q. Would you state your name, please?
A. Jerry Francis VonTungeln.

* * *

Q. By whom are you employed?
A. By Transworld Drilling Co.

[3]

Q. What is your title with Transworld Drilling Co.?
A. Comptroller.
Q. How long have you held that position?
A. Since 1974?

* * *

[7]

* * *

Q. Do you have with you a list of the members of the Board of Directors in 1972 and 1973 of Transworld (Nigeria) Ltd.?

A. No, sir, I know who they are but I don't have a list of them.

Q. Could you give them to me, please?

A. John E. Gillespie, George B. Parks, Paul Lee Romano.

* * *

[8]

* * *

Q. There were only three?

A. Yes.

Q. Is John Gillespie an American?

A. Yes.

Q. Where does he reside?

A. Oklahoma City.

* * *

Q. George B. Parks, is he an American?

A. Yes.

Q. Where was he living in 1972-1973?

A. Oklahoma City.

Q. Paul Lee Romano, is he an American?

A. Yes, sir.

Q. Where is he living?

[9]

A. Oklahoma at this time.

Q. Who were the officers of Transworld Drilling (Nigeria), Ltd.?

A. It does not have officers per se.

Q. No officers?

A. No. There's a managing director.

Q. Who's the managing director?

A. At that time I don't know. Paul Romano is the last one.

Q. Is he an American?
A. Yes.

* * *

[11]

* * *

Q. What is the home office of Transworld Drilling, Ltd., the Bahamian corporation?
A. Nassau, Bahamas.
Q. Does it maintain an office in the Bahamas?
A. Registered agent.
Q. Where is the managerial offices, in Oklahoma City?
A. Yes.

* * *

[15]

* * *

Q. Mr. Romano was president and chief executive officer and now he's president, is that correct?
A. I believe that's the current—
Q. Is that of which corporations, just Transworld Drilling Co., Ltd., or any other company?
A. He would be Transworld Drilling Co., Transworld Drilling Co., Ltd. and Kerr-McGee, Ltd.

[16]

Q. Is there a Kerr-McGee, Ltd.?
A. Yes, sir.
Q. What kind of corporation is it?
A. It's a Bahamian corporation.

* * *

[24]

* * *

Q. What does Transworld Drilling, Ltd. have, all these various positions in that company that I read here other than

[25]

president, vice-president, secretary and so forth, in other words, does it have a manager of personnel and safety, administrator?

A. No.

Q. Does it have a safety assistant?

A. No.

Q. Superintendent of maintenance supply?

A. No.

Q. Does it have an operations assistant?

A. No, sir.

Q. Does it have a senior staff engineer?

A. No, sir.

Q. All those jobs, wouldn't it be fair to say, all those functions in Transworld, Ltd., Transworld Drilling, Ltd., the Bahamian corporation are really in effect performed by those officers in Transworld Drilling Co., is that true?

A. Yes, sir.

* * *

[28]

* * *

Q. At the present time who is the managing director, (of Transworld Nigeria) do you know?

A. John Soucek.

Q. And Mr. Soucek, is he an American?

A. Yes, sir.

* * *

Q. Who is over him?

A. The managing director, he reports to John Gillespie.

[29]

Q. Who is one of the directors?

A. Yes, sir.

Q. There are three directors of that company and all three live in the United States and John Gillespie is one of them?

A. Yes, sir.

* * *

Q. Now, who does Mr. Gillespie report to?

A. Mr. Hanna.

Q. And who is Mr. Hanna and what position does he hold in the Kerr-McGee complex of corporations?

A. He is executive vice-president of Transworld Drilling Co., Transworld Drilling Co., Ltd. and Kerr-McGee, Ltd.

Q. Is he an American?

[30]

A. Yes, sir.

Q. Where is his office?

A. In Oklahoma City.

Q. Now, are you familiar, have you seen the contract for drilling involving Rig No. 46 . . .

A. Yes, sir.

* * *

Q. And who was the contract between?

* * *

A. Between Gulf Oil Company Nigeria and Kerr-McGee, Ltd.

* * *

[39]

* * *

Q. So the judge and jury can keep up with this, the Americans and non American expatriates were paid by Transworld Drilling Co., Ltd., the Bahamian corporation?

[40]

A. Yes.

* * *

Q. What were the nationals, what kind of money were they paid?

A. In the local currency.

Q. Out of what bank?

A. The bank account in Warri.

Q. Bank account?

A. For Transworld Drilling Co. (Nigeria) Ltd.

Q. Who controlled that account, who signed on it?

A. I would not offhand know the list of signers but there would be a list.

Q. Would there be more than one?

[41]

A. Yes.

Q. Would all of them be Americans?

A. Yes, sir.

Q. How were the funds that were used to pay those people transferred to that account?

A. The payment would have been from Kerr-McGee, Ltd. to the Nigerian company.

Q. Where would that bank account of Kerr-McGee be maintained in?

A. Fidelity Bank, Oklahoma City.

* * *

[42]

* * *

Q. What about the payment to the American and non American expatriates by Transworld Drilling Co., Ltd., the Bahamian corporation, where is that bank account maintained?

A. That would be in Fidelity Bank, Oklahoma City.

Q. But it would be in the name of Transworld Drilling Co., Ltd.?

[43]

A. Yes, sir.

* * *

Q. Who would sign on those accounts?

A. Namely it's the officers plus the treasury.

Q. Treasury or treasurer?

A. It's a function of the treasury, it would be more than one person.

Q. Would they be Americans who maintained their offices in Oklahoma City?

A. Yes, sir.

Q. Now, do these contracts state how Gulf pays Transworld Drilling Co. (Nigeria) Ltd. for its drilling service?

A. Gulf does not pay Transworld Nigeria, it's Kerr-McGee, Ltd.

Q. Does the contract provide that?

A. Yes.

Q. Where do they pay them at, in what account?

[44]

A. Wherever Kerr-McGee, Ltd. requested payment.

Q. Where has that been—

A. In Fidelity Bank, Oklahoma City.

[45]

* * *

Q. I take it out of that account would it be a different account or the same account that you had transferred money from Kerr-McGee, Ltd. to Transworld Drilling Co. (Nigeria) Ltd. for payment of salary to the Nigerian nationals?

A. Yes, sir.

[46]

Q. That same account?

A. Yes.

Q. What about the profits from the drilling, where were they transferred to?

A. They would be in Kerr-McGee, Ltd. in Oklahoma City.

Q. They would remain in that account?
A. Yes.

* * *

[50]

Q. Why was the ownership changed from Transworld Drilling Co., Ltd. to Kerr-McGee, Ltd. in 1968 or do you know?
A. Becauses of a decree in Nigerian law.

* * *

[52]

* * *

A. Well, the drilling vessel has continuous maintenance and its done on location.

* * *

[65]

Which company you're talking about?

MR. MUSSLEWHITE:

Any of the Kerr-McGee companies.

Q. What is the name of the company in the Middle East?
A. Transworld Drilling Co., Ltd. and then we have the Kerr-McGee, Ltd. operations in Nigeria, we have another 51% ownership in the company called Transworld Drilling Co., Ltd. that's working in the North Sea, the whole land sector.

* * *

Q. All these offices though, they're subject to the control and direction of the

[66]

main office in Oklahoma City, aren't they?

A. Depending upon what type of operation we're involved in, yes, the day to day operations for the local office.

Q. Let's go to Transworld Drilling Co. Nigeria, Ltd., you already told us that John Gillespie controls the actions of the drilling superintendent, managing director there in Warri more or less, is that correct, Warri or Lagos, I'm sorry?

A. That's who he reports to, yes.

Q. And the policy for those various companies and decisions as to where they're going to go and what they're going to do are generally handled in Oklahoma City, isn't that true?

A. Yes.

Q. Now, for example, where drilling Rig 46 is going to be, that decision would be made in Oklahoma City?

A. Yes.

Q. And more than likely the contract for its renewal of that Gulf contract or

[67]

contract with somebody else for its services will be handled, negotiations will be handled out of Oklahoma City?

A. Yes.

* * *

Q. And when we say handle the day to day operations, we're talking about hiring, seeing that the local personnel

man is hiring the Nigerians that are needed for the work and seeing that they're paid out of the bank account of Kerr-McGee, Ltd. with the monies transferred and doing the day to day maintenance, seeing that that's done which you say is really done at location, not usually on

[68]

shore but at location, is that correct?

A. Right.

Q. Do you have any idea who would have the records as to the maintenance records of this vessel since say in the year 1972 and 1973?

A. It's not really such a thing as a maintenance record to my knowledge.

* * *

[79]

* * *

Q. Mr. VonTungeln, could you tell me, describe the office setup in Oklahoma City, I mean, is your office in a building owned by the company or—

A. Yes, we're in a complex owned by Kerr-McGee Corp.

Q. What is it called?

[80]

A. Well, the one that we're in is called what, McGee Center, McGee Tower.

Q. And the home office of course for Kerr-McGee covers the home office of Transworld Drilling Co.?

A. Yes.

Q. And it's the home office for the operating office for all the rest of the subsidiaries, isn't it?

A. Yes.

* * *

[81]

* * *

Q. I mean the executive decisions of Transworld Drilling Co. Nigeria, Ltd. are made by the Board of Directors?

MR. TOMPKINS: Of what company?

BY MR. MUSSLEWHITE:

Q. . . . Transworld Drilling Nigeria Co., Ltd.

A. I'm not sure it makes any executive decisions.

* * *

[88]

* * *

Q. Now, what kind of reports does the managing officer whose name you're going to supply us submit to John Gillespie?

A. He submits I believe it's twice a week, I could be wrong, it's an operational record showing footage drilled, major repairs done or any other thing that he feels may be important to Mr. Gillespie.

Q. How is that submitted, by mail or cable?

A. Cable.

* * *

[89]

* * *

Now, if Mr. Gillespie didn't like what he saw on the reports, his response would be by cable, generally?

A. Yes.

Q. Do you know how often he goes to Nigeria a year, if any?

A. Frequently.

Q. Frequently?

A. Yes, sir.

Q. Does he have any other responsibilities, what are his responsibilities did you say in Transworld Drilling Co., Ltd.?

A. He's an operational vice-president.

Q. What about Transworld Drilling Co.?

A. I believe the same title.

Q. And does his major responsibility lie in the Nigeria operation or does he have other operations of his responsibility?

A. I believe he has all operations except the Transocean Drilling operations.

* * *

[90]

Q. So he is the operations man for all operations of Transworld Drilling Co. and Transworld Drilling Co., Ltd. and other subsidiaries doing drilling except for Transocean operation?

A. Yes.

* * *

[106]

* * *

Q. Isn't it a fact that you have standard safety rules and instructions concerning operations of all your rigs

that are promulgated here in the United States that would apply to Rig 46?

A. I really don't know, I understand we

[107]

followed safety rules set up by the International Association of Drilling Contractors.

Q. Where is the home office of that?

A. I don't know.

Q. It's not in Nigeria though, is it?

A. No.

Q. It's somewhere in the United States, isn't it?

* * *

[108]

* * *

A. I do not know because the IADC primarily follows OSHA and Coast Guard requirements . . .

* * *

[109]

* * *

A. My understanding is that we primarily build rigs to get ABS, American Bureau of Shipping, anything done after that I'm not familiar with it.

* * *

APPENDIX 9

DEPOSITION II OF JERRY VON TUNGELN

[2]

* * *

JERRY VON TUNGELN,

a witness, being produced, sworn and examined on behalf of the plaintiff, deposeth and saith as follows:

* * *

[8]

* * *

Q. Well, my point is, I believe, didn't you tell me at that time that officers in Kerr-McGee (Ltd.) were Gillespie, Romano,

[9]

Hanna, and Cox?

A. Not at that time; currently.

Q. They are currently?

A. At the time you took that deposition, they were officers of Kerr-McGee, Limited.

* * *

[12]

* * *

Getting down to business on Transworld Rig 46 . . .

* * *

[18]

* * *

Q. All right. Now, I'm just looking at the specifications described in the bill of sale, and it says, "Continental-Emsco 20,000 foot capacity," that's the drilling tool there; is that the rotary table?

A. That's the draw works.

Q. That's the draw works. So Continental-Emsco is a company in the United States, isn't it?

A. Yes.

* * *

Q. And it says, "2600 H.P. diesel-electric rotary rig with 142 Ideco Mast." Do you know who Ideco is?

A. Yes.

Q. What's that?

[19]

A. It's a U. S. corporation.

* * *

[23]

* * *

Q. . . . Did Transworld Drilling Company, Limited, transfer the title of the vessel?

A. Yes.

Q. It did?

A. Yes.

Q. Do you have the bill of sale on that?

* * *

A. I don't see it.

[24]

* * *

Q. All right. You know that took place though; is that correct?

A. Yes.

Q. When did that take place?

A. In 1968 or it would be the first part of 1969.

Q. Now, who still owns the title on the vessel?

A. Kerr-McGee, Limited.

Q. Kerr-McGee, Limited is an American corporation, or is what?

A. A Bahamian corporation.

* * *

Q. . . . As of right now, P. D. Romano is President; (of Kerr McGee, Ltd.) is that correct?

A. Yes.

Q. I see a letter dated January 15, '79, J. E. Gillespie,

[25]

vice-president.

A. Yes.

* * *

Q. Do you know offhand who the other officers are?

* * *

A. Harry Hanna.

* * *

Q. What's his position?

A. Executive vice-president.

Q. Who else?

A. John Cox.

Q. What's his position?

A. He's vice-president of, I believe, it's marine engineering and construction.

Q. Who else? Any other vice presidents?

A. We just had a new one named; his name is Larry Werts, he is vice-president of marketing. That should be all the vice-presidents.

Q. And are all those Americans?

A. Yes.

Q. Do all of them live here in Oklahoma City?

A. Yes.

[26]

Q. And work here in Oklahoma City?

A. Yes.

Q. And I think we went into this some, but let me just, so I can tie this in, if you don't mind, Jerry, does Kerr-McGee maintain an office in the Bahamas?

A. Yes.

Q. Does it maintain any active officers who are working in the company there, or just an agent?

A. Well, there is actually an officer; I don't know what you mean by an agent.

Q. Well, do you have your day-to-day operations there in the Bahamas?

A. No.

* * *

Q. Do you know what kind of office you have in the Bahamas?

A. No.

Q. Have you ever been there?

A. No.

Q. Have you ever seen the office?

A. No.

Q. Do you know whether it's an agent who acts as agent for several corporations, or is it a separate oqice with a

[27]

staff, does it actually do any operational work?

A. I assume they are for more than one corporation.

Q. An agent for more than one corporation. Well, what you are telling me that you do know is there is no operational work going on in the Bahamas, is that correct, for Kerr-McGee, Limited?

A. For Kerr-McGee, Limited, I assume that's right.

* * *

[42]

* * *

Q. And, so far as collecting from Gulf Nigeria for anything else or for doing the drilling, Kerr-McGee, Limited would collect that directly from Gulf Nigeria?

A. Yes.

Q. Well, what were those services that the Charterer was to render?

A. They provide labor, catering, repairs and maintenance for those items they could secure locally.

* * *

[43]

* * *

Q. One thing we know for sure, Kerr-McGee, Limited has no offices in Nigeria, does it?

A. No.

* * *

[49]

* * *

Now, the other thing I must know in connection with those nine (supervisory) employees is by whom were they employed, Kerr-McGee, Limited, Transworld (Nigeria), Limited, Kerr-McGee, Incorporated; I want to see the official records of the company showing by whom they were employed and who they received their salary from, or income; do you know that offhand?

A. If they are Americans, yes, I know.

Q. If they are Americans, who were they employed by?

A. Transworld Drilling Company, Limited.

Q. Of Bahama?

A. Yes.

Q. So you're saying that in 1973 all those who were Americans and you feel confident that Wilson and Gore, at least, were Americans; is that right?

A. Well, even if they were not Americans, they still would have been employed by Transworld Drilling Company, Limited,

[50]

Bahamas.

* * *

[51]

* * *

Now, then, the rig maintenance supervisor, would that be the man in charge of maintenance?

A. Yes.

Q. Do you know whether or not he's American?

A. He will be an American or what we call ENAs, expatriot non-American.

Q. And all those are employed by Transworld Drilling Company, Limited of Bahamas?

A. Yes.

[53]

* * *

Q. But they still could be on the payroll of Kerr-McGee, Limited?

A. Kerr-McGee, Limited does not have a payroll.

* * *

[57]

* * *

Q. . . . In that letter, you say that J. J. Cable was the drilling superintendent in 1972 and '73. Was he an American?

A. Yes.

Q. And his last known address was 222 North E, Yale, Oklahoma.

A. Yes.

* * *

[58]

* * *

Q. So, Cable though, he was employed, was he not, by Transworld Drilling Company, Limited of Bahama?

A. Yes.

* * *

[59]

* * *

Q. Now, Don Hall was an American, wasn't he?

A. Yes.

Q. And according to Exhibit 4, he was the managing director, at least part of the time, . . .

* * *

[60]

* * *

Q. All right. Now, Don Hall was an American. Now, whose payroll was he on?

A. He was on Transworld Drilling Company, Limited, Bahamas.

Q. So, he was not on the payroll of Transworld (Nigeria), either?

A. No.

Q. Even though he was the managing director of Transworld Drilling Company (Nigeria)?

A. Right.

Q. And who did he report to?

A. He reported to John Gillespie.

* * *

[63]

* * *

Q. . . . you know enough about Exhibits 9 and 9-A to know that there are, during that period of time, lots

of correspondence signed by Mr. Romano . . .he was vice-president of Transworld Drilling Company, Delaware, and Transworld Drilling Company (Bahamas), Limited; is that correct?

A. Yes.

* * *

[65]

* * *

. . . Mr. Romano and Mr. Gillespie both were living here and working here or their main office was in Oklahoma City?

A. Yes.

Q. Who did Mr. Romano report to, the president or the board?

A. Grier Zimmerman, the president.

Q. Okay. Where does he reside?

A. Oklahoma City.

* * *

[79]

* * *

Q. Does Transworld Drilling Company, Bahamas have a bank account in the Bahamas?

[80]

A. No.

Q. Where are its bank accounts? I believe you said one of them is Fidelity Bank?

A. One is Fidelity Bank.

Q. In Oklahoma City?

A. Oklahoma City.

Q. Any others?

A. I think it has one in the First National Bank in Chicago.

Q. An yothers?

A. I believe one in City Bank in New York.

Q. Any others?

A. It has various accounts overseas that are primarily operating accounts.

Q. Does it have any banking accounts in Nigeria?

A. No.

* * *

[81]

Q. What about Kerr-McGee, Limited?

A. The only account that I know it has is in Fidelity Bank, Oklahoma City.

Q. That's the only account that you know of?

A. Yes.

* * *

[82]

* * *

Q. (By Mr. Musslewhite) What employees work in that office in Warri (of Transworld Nigeria) and who are they and their nationalities and what positions do they hold for '72 and '73; do you know?

* * *

A. I know that the drilling superintendent and the accountant or the controller are located there and would have been—

Q. At that office?

A. At that office and would have been Americans at that time.

Q. Okay. But they are on the payroll of Transworld Drilling Company, Limited of Bahamas?

A. Yes.

* * *

Q. Any other Americans that you know offhand that would be at that office besides superintendent and accountant?

A. That would be the only two.

* * *

Q. And was any money sent to Transworld (Nigeria) Limited by any of its parent companies or affiliated companies ever?

A. Kerr-McGee, Limited sent money.

Q. That's the money paid, $2,000.00 a day?

A. Yes.

* * *

Q. The only money it ever had was money paid by Kerr-McGee, Limited; that's the only source of money you know of from Transworld (Nigeria) Limited; is that right?

[85]

A. Yes.

Q. Was any other company other than Kerr-McGee, Limited using the services of or bareboat chartering vessels to or working with Transworld (Nigeria) Limited?

A. No.

* * *

Q. Really and truly, and you're familiar with these operations overseas, Jerry, the truth of the matter is Transworld (Nigeria) had two purposes; one, you had to comply with Nigerian law; that's true, isn't it?

A. Yes.

* * *

[86]

* * *

Q. Another purpose was just to have a personnel company over there and furnish personnel to these rigs, personnel and supplies?

A. No, because anywhere that we go that does not have a problem of registering a company, we try to operate as a branch. It is only in those countries that have requirements that you use a domicile company to operate do we operate in this manner.

* * *

Q. . . . So that's the sole reason?

A. To comply with Nigerian laws.

Q. Otherwise, you would be operating as a branch?

A. Yes.

[87]

Q. And by "branch," you mean not a separate company, but as a subdivision of Transworld Drilling, Limited, Bahamas?

A. Yes.

Q. Because that's the way you were operating up until the law—

A. Right, until the decree.

* * *

[91]

* * *

Q. (By Mr. Musslewhite) Who handled advertising for those companies; do you know that?

* * *

A. We do very little advertising and it's done on a corporate-wide basis.

Q. By Kerr-McGee Corporation?

A. Yes.

Q. Who handles that for the Kerr-McGee Corporation?

A. I really don't know.

Q. Is it an American Madison Avenue firm, or do you know?

A. The name of it, I believe, is Lowe-Runkle, but I really don't know where they are from.

Q. Are they an American firm?

A. I would assume they are, yes.

* * *

[93]

* * *

Q. . . . What about the employee plan, the pension benefit plan; does the company have one plan for all of the employees of its subsidiaries like a lot of the larger companies do?

A. I wouldn't say it has one plan; it has a plan, yes.

* * *

Q. . . . Which corporation handles the plan? Kerr-Gee Corporation?

A. Kerr-McGee Corporation.

Q. And who in Kerr-McGee Corporation would be responsible for that? What office?

A. Personnel section.

Q. All right. Can you tell us what the plan is, . . .

A. There is a retirement plan.

Q. What about hospitalization?

A. There is a hospitalization plan, income protection.

* * *

[94]

* * *

Q. Those plans are managed by the personnel section of Kerr-McGee Corporation, correct?

A. Through an outside agent.

Q. Who is the outside agent?

A. I believe the Prudential Insurance.

* * *

Q. Certainly that's an American corporation, isn't it?

A. Yes.

Q. Now, you were about to say and I cut you off that at least some of the employees of the subsidiaries are ineligible to participate in those plans managed by the Kerr-McGee Corporation, is that true?

A. Yes.

* * *

Q. You and I both know the Nigerians are excluded?

[95]

A. Yes.

Q. By Nigerians, I'm talking about employees of Transworld (Nigeria) are excluded, aren't they?

A. Yes.

Q. You've already said Kerr-McGee, Limited has no employees.

A. Right.

Q. So we don't have to worry about them. What about Transworld Drilling, Limited, Bahamas?

A. They would be excluded.

* * *

Q. What about Transworld Drilling, Delaware corporation?

A. Everyone that has met the time period or eligibility period would be eligible.

* * *

[100]

* * *

Q. Tell me how you distinguish them. What's the distinguishing factor?

A. Well, anyone that's employed on a payroll of Transworld Drilling Company, Limited that's an American is eligible. If his time is in, he is eligible for the plan.

* * *

[107]

* * *

Q. And let's go down to bank signators. It says, "Resolving that Mr. Owen be deleted." Who is Mr. C. Owen?

A. He was the accountant at the time, or—prior to this meeting.

* * *

[108]

* * *

Q. Who is Mr. Duttweiler?
A. He was replacing Mr. Owens as accountant.
Q. Are they both Americans?
A. Yes.

* * *

Q. Where is Owen, now?
A. He works in the Morgan City operation.
Q. Louisiana?
A. Yes.
Q. Where is Duttweiler?
A. He's no longer employed.
Q. Who is Owen employed by, now?
A. Transworld Drilling Company, Delaware.
Q. He was, at that time, employed by Transworld Drilling Company, Limited, Bahamas?
A. Yes.

* * *

[109]

* * *

Q. All right, "It was resolved that Mr. D. A. Watkins be hereby appointed signator to the company's bank accounts." Who is D. A. Watkins?
A. I believe he's the treasurer of these companies.

* * *

Now, did he live in Lagos?
A. No. He was in Oklahoma City.

Q. So he could sign on the bank accounts in Nigeria from Oklahoma City?

A. Yes.

Q. Is that true?

A. Yes.

* * *

Q. All right. And then they restate all of them, Mr. G. O. Zimmerman—I'm reading from those who could sign on the account—G. O. Zimmerman.

A. That should be G. D. Zimmerman.

Q. He's in Oklahoma City, isn't he?

[110]

A. Yes.

Q. He could sign on the account by himself, couldn't he?

A. Yes.

Q. G. B. Parks, he's in Oklahoma City, isn't he?

A. Yes.

Q. He could sign on the accounts by himself?

A. Yes.

Q. We've already established that Mr. D. A. Watkins could sign on the account by himself; is that correct?

A. Yes.

* * *

[122]

* * *

A. . . . All right. . . . The dividends paid by Transworld Drilling Company (Nigeria) is none. . . .

[123]

Do you have any idea how much has been accumulated in the earned surplus?

A. I'm going to say something less than a hundred thousand dollars, but I just don't know.

Q. Is that over the period since what?

A. 1968.

Q. So that would be less than $10,000 a year, wouldn't it?

A. (Nodding yes.)

Q. Do you know what their gross income was? Well, $2,000 a day back then, whether that paid for everything?

A. Yes.

* * *

[125]

* * *

Q. So we'll say somewhere between '73 and '79 it was decided that Rig 46 needed some fairly major repairs or overhauling; is that correct?

A. It was decided by an ABS surveyor, yes.

Q. Who is an ABS?

A. American Bureau of Shipping.

Q. Did they have control over that vessel?

A. No, but we try to keep our rigs up to a standard that would be approved by the American Bureau of Shipping.

* * *

[131]

* * *

Q. All right. Now, the money that's paid by Gulf Oil (Nigeria) to Kerr-McGee, Limited, what bank account does that go into?

A. Fidelity and Kerr-McGee, Limited.

[132]

Q. In Oklahoma City, Oklahoma?

A. Yes.

Q. And the money that's paid by Kerr-McGee, Limited to Transworld Drilling (Nigeria), Limited, what account does that come out of?

A. The same account.

Q. Same account. It's just a transfer from Gulf to Oklahoma and Oklahoma to Nigeria?

A. Yes.

* * *

[135]

* * *

Q. Going back to L, a list of the amount of capital paid in, not just authorized, of Transworld Company, Limited (Bahamas). Do you know that?

A. It's 10,000 shares valued at $28,000, and it's held by Kerr-McGee Corporation.

* * *

Q. All right. What about Kerr-McGee, Limited?

A. There is a thousand shares, $28,000. It's held by Transworld Drilling Company, Limited (Bahamas).

Q. But paid in was $28,000?
A. Yes.

[136]

Q. Okay. And that $28,000 company is a company that owns—how much would you say Rig 46 was worth?
A. I don't know.

* * *

Q. Two million. To replace it what would it cost?
A. I would guess somewhere between 15 and 20 million.

* * *

[141]

* * *

A. . . . We have not purchased a rig since I've been here, outside, in that nature.
Q. You have purchased them all from Kerr-McGee Corporation?
A. We have built some in the name of Transworld, Limited and also Transworld Delaware with surpluses from those two companies.
Q. But neither Kerr-McGee, Limited nor Transworld (Nigeria), Limited have ever built a rig, have they?
A. No.

[142]

* * *

Q. What about the paid in or capital loan of Transworld, Limited (Nigeria)?

A. That was generated by the assets that were onshore in Nigeria owned by Transworld Drilling Company, Limited—

Q. Of the Bahamas?

A. —of the Bahamas.

[143]

Q. Do you know what the value was placed on those assets and what they consisted of?

A. There was a trailer camp, warehouse, and office furniture and fixtures, and that's it.

Q. That's it. What was the value placed on that?

A. I think about sixty-some thousand dollars.

Q. Any other capital ever been paid in?

A. No.

* * *

Q. Do you know whether or not Transworld Drilling (Nigeria) has ever borrowed any money—

A. No, it has not.

* * *

[156]

* * *

. . . Transworld Drilling (Nigeria), it did no business except with Kerr-McGee, Limited; is that correct?

A. That's true.

* * *

[157]

Q. In so far as Rig 46 is concerned, we see that Exhibit 15 reflects that as far as maintenance of Rig 46

is concerned Kerr-McGee, Limited paid for most of the repairs, isn't that true, in '72 and '73?

A. Paid for the items, yes.

[158]

* * *

Q. Are you telling me that most of the parts that are reflected by this figure in paragraph 10 came from the United States?

A. Came from somewhere outside of Nigeria.

* * *

[161]

* * *

Q. . . . Kerr-McGee, Limited, it only did business with whom?

A. With Gulf Oil Company (Nigeria).

Q. Okay.

A. And Transworld Drilling (Nigeria) and Transworld Drilling Company, Limited, Bahamas.

Q. Okay. Nobody else?

A. No.

Q. It wasn't involved in any other rig work except 46; is that correct?

A. During this time, that's correct.

* * *

[164]

* * *

Q. . . . Let's take No. 2, Grier Zimmerman.

A. He was paid partially by Delaware corporation and

the Bahamian corporation, Transworld Drilling Company, Limited, Bahamas.

* * *

[165]

* * *

Q. . . . F. C. Love, president of Kerr-McGee Corporation, on the board of Transworld Drilling Company, Delaware, on the board of Transworld Drilling Company, Limited, Bahamas, on the board of Dover Oil and Gas Company, Limited, U. K. Corporation, and on the board of—I'm sorry; next number.

A. That one is (paid by) Kerr-McGee Corporation.

* * *

[170]

* * *

Q. . . . Who had the authority to sign checks on the accounts of Kerr-McGee, Limited?

* * *

A. It probably would have been Grier Zimmerman, Paul Romano, D. A. Watkins, a guy by the name of R. D. Robins, who I believe was the assistant secretary-treasurer.

Q. They were all people who had offices here in Oklahoma City?

A. Yes.

* * *

[171]

* * *

Q. . . . Can we say, . . . that all the amounts (parts) paid for by Kerr-McGee, Limited came from the United States, probably?

A. Primarily, yes.

Q. Primarily. And the rest of it, only that which is paid for by Transworld Drilling (Nigeria), Limited came from Nigeria?

A. It was purchased in Nigeria. It probably also came from the U. S. at some point in time.

Q. Okay.

A. There is no manufacturers of drilling equipment in Nigeria.

Q. All the parts had to come from the United States; is that

[172]

correct?

A. Yes.

* * *

[175]

* * *

Q. . . . Well, you've already told us about the advertising people. Are there any other categories you can think of other than public relations, advertising, where they do their work that would apply to generally all the

[176]

companies within the Kerr-McGee Corporation?

A. The legal department.

Q. What others?

A. The finance area.

Q. Financial area, What else?

A. Personnel.

Q. . . . What else?

A. Payroll.

Q. Payroll. Are the personnel records for all the Kerr-McGee companies kept under the Kerr-McGee Corporation personnel department?

A. At least a copy of them should be, yes.

Q. All right. All those departments, their work is common to all the subsidiary companies; is that what you are telling me?

A. Yes.

Q. Are all those people in those departments paid by Kerr-McGee Corporation, generally, with a few possible special exceptions?

A. I assume they would be, yes.

* * *

[179]

* * *

Q. . . . Don't you have a central accounting function here in Oklahoma City for all your functions?

A. Yes.

* * *

[180]

* * *

Q. What about Transworld Drilling, Bahamas?

A. It's (accounting) done by hand.

Q. Where?

A. In this (Oklahoma City) office.

* * *

[182]

* * *

Q. . . . you've got a purchasing department, I take it?

A. Purchasing department.

Q. Does that purchasing department do all the purchasing for all the companies?

A. Yes.

* * *

Q. And they (purchasing department) are on the payroll of Kerr-McGee Corporation?

A. I assume, yes.

* * *

[202]

Q. Do you know who A.T.F. Seale was?

A. Seales. I'm not sure of his title. He retired not long after that; I'm not sure.

Q. He was an officer of Kerr-McGee Oil Industries, Incorporated?

A. Yes.

Q. It says vice-president. He was here in Oklahoma City?

A. Yes.

Q. . . . Can you read who the secretary is that signed for both companies, Kerr-McGee and Transworld Drilling Company?

A. Adams.

Q. Adams?

A. Yes.

Q. So, in the agreement to substitute Transworld Drilling, Limited for Kerr-McGee Oil Industries, Incorporated Adams acted as secretary for both corporations?

A. Yes.

* * *

Q. And if we turn to the contract between Nigerian Gulf and Kerr-McGee Oil Industries, Incorporated, which so the record is clear, the Gulf operation was initially negotiated by Kerr-McGee Oil Industries, Incorporated, which is the

[203]

same as Kerr-McGee Corporation, is that correct,—

A. Yes.

* * *

Q. Do you know where this contract was signed, April 21, '74, between Kerr-McGee Oil Industries, Incorporated, (and Gulf Nigeria) by Kerr-McGee? Is there any way you can tell that?

A. I would say it was signed in two different places.

Q. All right.

A. I would say these people signed it in Oklahoma City.

Q. That's the Kerr-McGee people?

A. Yes.

* * *

[204]

Q. . . . Where is John Gillespie now, did you say?

A. He's in this office.

Q. Here?

A. In Oklahoma City, yes.

Q. But what position does he hold?

A. He's vice-president of operations.

Q. Of Kerr-McGee Corporation?

A. No, of Transworld Drilling Company, Delaware, Transworld Drilling Company, Bahamas, and Kerr-McGee, Limited of Bahamas, and is a director of Transworld (Nigeria).

* * *

APPENDIX 10A

ROTARY DRILLING CONTRACT BY AND BETWEEN NIGERIAN GULF OIL COMPANY AND KERR-McGEE OIL INDUSTRIES, INC.

[1]

ROTARY DRILLING CONTRACT

THIS CONTRACT is made between NIGERIAN GULF OIL COMPANY (hereinafter called "COMPANY") and KERR-McGEE OIL INDUSTRIES, INC. (hereinafter called "CONTRACTOR"), as of the _____ day of April, 1964.

* * *

1. OBJECTIVES—PREPARATORY OPERATIONS —OPERATING PERIOD DEFINED.

1.1 During the continuance of the below defined "Operating Period" of this Contract, CONTRACTOR shall drill and complete, work over or deepen such well or wells for hydrocarbons as COMPANY shall require within said Territory of Operation.

* * *

[2]

* * *

1.3 CONTRACTOR will provide its submersible barge rig, commonly known as its Rig No. 46 and herein called the "Drilling Unit", for the conduct of the drilling operations hereunder; the principal items comprising the Drill-

ing Unit being more particularly described in Schedule "B".

The Drilling Unit is, at the effective date of this Contract, engaged in operations in the Gulf of Mexico for Gulf Oil Corporation, COMPANY's parent corporation. As soon as the Drilling Unit completes operations on its final well under its said present contract with Gulf Oil Corporation, CONTRACTOR will cause it to be moved to a shipyard (or if feasible from the standpoint of the work to be done on the Unit) to protected waters on the U. S. Gulf Coast, where CONTRACTOR will have native crew quarters, a water distillation unit, and a diesel powered pile driving hammer (as such items are more fully described in Schedule "B") installed thereon, as well as any work performed which is required by CONTRACTOR's insurance carrier to prepare the Drilling Unit for trans-Atlantic tow.

* * *

[3]

* * *

. . . provided, further, that if upon the expiration of the twenty-four (24) month Operating Period (or the extension thereof, if it should be extended pursuant to paragraph 20.3 or other applicable provision hereof), CONTRACTOR's Drilling Unit is engaged in the drilling of a well or has not been returned to protected waters, then the Operating Period of this Contract will not terminate until such well has been completed or CONTRACTOR released therefrom and the Drilling Unit has been returned to protected waters suitable for preparation of the Drilling Unit for tow back to the U. S. Gulf Coast or point no

greater distant as may be determined by CONTRACTOR

* * *

[5]

* * *

3. CONTRACTOR'S PERSONNEL.

3.1 . . . CONTRACTOR shall further provide all such other personnel, labor and services as are specified to be provided by CONTRACTOR under Schedule "B". . . .

* * *

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* * *

13. INSURANCE.

13.1 CONTRACTOR agrees to purchase and maintain the following insurance at all times during the performance of this Contract, with carrier acceptable to COMPANY:

* * *

B. Workmen's Compensation coverage in accordance with the applicable laws of the State of Oklahoma covering U. S. personnel employed by the CONTRACTOR on work performed hereunder; provided CONTRACTOR may be self-insured up to $25,000 on any one accident, with excess limits of $250,000 to be insured with a carrier acceptable to COMPANY.

* * *

13.02 Comprehensive General Liability Insurance

A. Comprehensive General Liability Insurance covering all operations of CONTRACTOR, includ-

ing, among other risks, contractual liability to cover hold-harmless clauses herein in favor of COMPANY, with limits of not less than $100,-000 for injury to or death of one person, $500,-000 for injury to or death of more than one person by reason of each occurrence, and Property Damage covering loss of or damage

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to the property of third persons in the amount of $500,000 for any one occurrence.

* * *

[19]

* * *

14.3 CONTRACTOR, insofar as COMPANY is concerned, shall (except as provided in paragraph 14.4 below) be solely responsible and liable for injury to or the death of any third person, and for the loss or damage to property of any third person, caused by the negligent acts or omissions of CONTRACTOR and CONTRACTOR's subcontractors, including their respective agents, employees, and other representatives, in the performance of the work covered by this Contract and (except as provided in said paragraph 14.4) CONTRACTOR agrees to indemnify and save COMPANY harmless from and against all loss, damage, cost and expense incurred by or on COMPANY's behalf, as a result of such damage, injury or death, and to defend COMPANY, should COMPANY so desire, against all claims, demands, actions, suits, proceedings, and judgments relating thereto.

* * *

[29]

* * *

19. *ASSIGNMENT OF CONTRACT*

19.1 . . . CONTRACTOR shall not assign this Contract except as may be consented to in writing by COMPANY; provided, however, that nothing contained in this paragraph shall prohibit CONTRACTOR from making a collateral assignment of sums due CONTRACTOR

[30]

under the terms of this Contract to secure the payment of any indebtedness of CONTRACTOR, it being expressly agreed, however, that any such collateral assignment shall have no effect on COMPANY's rights hereunder. Notwithstanding the foregoing it is agreed that CONTRACTOR, at its option, may substitute for Kerr-McGee Oil Industries, Inc., as party "CONTRACTOR" under and pursuant to this Contract, any legal entity (whether a corporation, partnership, limited partnership or other legal entity) which is, either directly or indirectly, wholly or substantially owned and controlled by Kerr-McGee Oil Industries, Inc.; provided, that Kerr-McGee Oil Industries, Inc. shall, and does hereby, guarantee performance by said substituted entity of all CONTRACTOR's obligations and liabilities hereunder. . . .

[34]

* * *

23. *LAW AND ARBITRATION.*

23.1 This Contract is accepted in the State of New York and it is expressly understood and agreed that the

status and forum of this Contract and all matters relating thereto, including without limitation by enumeration, its validity, construction, interpretation and enforcement shall be governed by the laws of said State.

* * *

[36]

* * *

24. *NOTICES.*

24.1 Any notice given pursuant to this Contract shall be in writing and shall be deemed to have been duly given when delivered by hand or by mail, telegram, cable or radiogram to, in the case of CONTRACTOR, CONTRACTOR's representative in charge of operations hereunder, and in the case of COMPANY, to COMPANY's General Manager or such other person or persons as may be designated by him, with copies of all such Notices to be furnished to:

CONTRACTOR:

Mail Address
Kerr-McGee Oil Industries, Inc.
c/o Drilling Department
Kerr-McGee Building
Oklahoma City, Oklahoma
Cable Address
Kermac, Oklahoma City, Okla.

COMPANY:

Mail Address
Nigerian Gulf Oil Company
Private Mailbag No. 2469
Lagos, Nigeria
Cable Address
NAGOC, Lagos, Nigeria

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* * *

27.1 . . .

For and on behalf of:

KERR-McGEE OIL INDUSTRIES, INC.
(CONTRACTOR)

By: /s/ A.T.F. SEALE

Capacity: Vice President, Operations

Witness:

/s/ GRIER ZIMMERMAN
/s/ MARION TAVERNINI

Date:

April 16, 1964

For and on behalf of:

NIGERIAN GULF OIL COMPANY
(COMPANY)

By: /s/ CLIFFORD PERRY

Capacity: Vice President

* * *

Schedule "A"

* * *

4. *Payment of Remuneration*

(A) Currency of remuneration:

United States Dollars

(B) Payment to be made to:

Kerr-McGee Oil Industries, Inc.

* * *

7. *Law and Arbitration*

(A) Law governing Contract:

State of New York

(B) Arbitration:

See 23.2 of the Contract

* * *

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SCHEDULE "B"

* * *

VII. PERSONNEL REQUIRED FOR OPERATION OF RIG AND VEHICLES:

1. RIG

A. Expatriate Personnel:

		Nationality	No. Required	
(1)	Superintendent,	U.S.A.	1	Contractor
(2)	Toolpushers,	U.S.A.	2	Contractor
(3)	Drillers,	U.S.A.	4	Contractor
(4)	Assistant Drillers	U.S.A. or European	4	Contractor
(5)	Mechanics and Electricians	U.S.A. or European	1	Contractor
(6)	Welders	U.S.A. or European	2	Contractor
(7)	Rig Maintenance Supervisor	U.S.A.	1	Contractor
(8)	Crane Operator	European or U.S.A.	2	Contractor

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(9)	Barge Positioning Engineer	U.S.A. or European	1	Contractor
(10)	Chief Clerk	U.S.A.	1	Contractor

Contractor and Company by mutual agreement may adjust or change classifications within the above expatriate crew compliment.

APPENDIX 10B

PLAINTIFF'S EXHIBIT 6

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS:

THAT KERR-McGEE OIL INDUSTRIES, INC., a Delaware corporation, in consideration of the sum of TEN DOLLARS ($10.00) and other good and valuable considerations to it paid by TRANSWORLD DRILLING COMPANY, LIMITED, a Bahamian corporation, the adequacy and receipt of which is hereby acknowledged, has bargained, sold, granted, conveyed and transferred, and by these presents does bargain, sell, grant, convey and transfer and deliver unto TRANSWORLD DRILLING COMPANY, LIMITED, its successors and assigns, the following described goods and chattels, to-wit:

One Mobile Offshore Drilling Platform identified as KERR-McGEE RIG No. 46, complete with drilling tools.

Platform Hull dimensions: 202′ x 242′ x 100′ Texas Deck Height; Ingalls Shipbuilding Company, Hull No. 1012; Gross Tonnage: 640 (approximately); Quarters Capacity: 42 men; Drilling Tools: Continental-Emsco 20,000′ capacity, 2600 H.P. diesel-electric rotary rig with 142 Ideco Mast, complete with auxiliary equipment, installed

TO HAVE AND TO HOLD the same unto TRANSWORLD DRILLING COMPANY, LIMITED, its successors and assigns, forever.

IN WITNESS WHEREOF, KERR-McGEE OIL INDUSTRIES, INC. has hereunto set its hand and seal at two o'clock P.M., this the 23rd day of June, 1964.

KERR-McGEE OIL
INDUSTRIES, INC.

By /s/ A. T. F. SEALE
Vice President

ATTEST:

/s/ Signature Ilegible
Secretary

APPENDIX 10C

AGREEMENT

WHEREAS, heretofore and on the 21st of April, 1964, NIGERIAN GULF OIL COMPANY made and entered into a certain Rotary Drilling Contract with KERR-McGEE OIL INDUSTRIES, INC., a Delaware corporation, pursuant to which Kerr-McGee Oil Industries, Inc. was to perform certain oil and gas well drilling operations for Nigerian Gulf Oil Company in an area lying offshore Nigeria; and

WHEREAS, Kerr-McGee Oil Industries, Inc., hereinafter referred to as "Kerr-McGee", desires to substitute TRANSWORLD DRILLING COMPANY, LIMITED, a Bahamian corporation, hereinafter referred to as "Transworld", as party "Contractor" in said Rotary Drilling Contract; and

* * *

(1) Kerr-McGee does hereby substitute TRANSWORLD DRILLING COMPANY, LIMITED, as party "Contractor" in said Rotary Drilling Contract, with the same force and effect as though Transworld had been a signatory party thereto, and Transworld, as such Contractor, will perform all the obligations of the Contractor therein set forth, and shall be entitled to receive all the benefits accruing to said Contractor in said Rotary Drilling Contract.

* * *

DATED this the 1st day of June, 1964.

KERR-McGEE OIL
INDUSTRIES, INC.

By /s/ A. T. F. SEALE
Vice President

ATTEST:

/s/ Signature Illegible
Secretary

TRANSWORLD DRILLING
COMPANY, LIMITED

By /s/ GEORGE B. PARKS
Vice President

ATTEST:

/s/ Signature Illegible
Assistant Secretary

APPENDIX 10D

KERR-McGEE OIL INDUSTRIES, INC.

Kerr-McGee Building • Oklahoma City 2, Oklahoma

June 1, 1964

Nigerian Gulf Oil Company
Private Mail Box 2469
Lagos, Nigeria

Gentlemen:

This is to advise you that pursuant to the privilege granted in that certain Rotary Drilling Contract entered into with you under date of April 21, 1964, Kerr-McGee Oil Industries, Inc. has elected to substitute as party "Contractor" therein its wholly-owned subsidiary, TRANSWORLD DRILLING COMPANY, LIMITED.

Notwithstanding such substitution, it is understood and agreed, however, that Kerr-McGee does hereby guarantee performance by Transworld of all of Contractor's obligations and liabilities contained in said Rotary Drilling Contract.

The address of Transworld Drilling Company, Limited, is Kerr-McGee Building, Oklahoma City, Oklahoma; its cable address is KERMAC, Oklahoma City, and its Telex number is 071324.

Very truly yours,

KERR-McGEE OIL
INDUSTRIES, INC.

/s/ A. T. F. SEALE
Vice President, Operations

APPENDIX 10E

PLAINTIFF'S EXHIBIT 7

AGREEMENT FOR BAREBOAT CHARTER AND OPERATION OF DRILLING UNIT

This Agreement made and entered into effective as of the 15th day of November, 1968, by and between Kerr-McGee Limited (herein called "Kerr-McGee") and Transworld Drilling Company, Limited (herein called "Charterer").

WITNESSETH:

WHEREAS, Kerr-McGee is the assignee of that certain drilling contract dated April, 1964, executed by and between Kerr-McGee Oil Industries, Inc. and Nigerian Gulf Oil Company (such drilling contract being herein called the "Nigerian Gulf Contract"); and

WHEREAS, Kerr-McGee desires to retain Charterer to perform all operations in Nigeria that are required of the drilling contractor under said Nigerian Gulf Contract; and

WHEREAS, Kerr-McGee is the owner of that certain submersible barge rig, commonly known as Rig 46 and herein called the "Drilling Unit", and has agreed with Charterer to lease such Drilling Unit to Charterer for use in the performance of operations by Charterer under the Nigerian Gulf Contract, all in accordance with the provisions hereof.

* * *

[2]

2. In performing operations, Charterer shall utilize the Drilling Unit which is hereby leased, bareboat, to, and hired by, Charterer for a term (the "Lease Term") to run concurrently with the remaining portion of the Operating Period under the Nigerian Gulf contract, as such Operating Period has been heretofore (and may hereafter be) extended. . . .
Charter's agreement to perform operations under the Nigerian Gulf Contract for Kerr-McGee shall constitute the consideration to Kerr-McGee for the lease of the Drilling Unit and no separate monetary consideration shall be owing to Kerr-McGee for the lease of the Drilling Unit.

* * *

[3]

* * *

4. Charterer shall indemnify Kerr-McGee against and hold Kerr-McGee harmeless from all claims, suits, costs, expenses, damages and liabilities arising out of connected with or from the Drilling Unit, its delivery, possession, use, operation or return, during the Lease Term.

* * *

7. Charterer shall at the end of each calendar month prepare and furnish to Kerr-McGee invoices showing the remuneration due from Nigerian Gulf Oil Company for all work performed (including all costs that are reimbursable to the drilling contractor by Nigerian

Gulf Oil Company). All billings to Nigerian Gulf Oil Company shall be submitted by Kerr-McGee.

. . . Further, Kerr-McGee shall pay Charterer monthly, upon proper billing, at a daily rate of $2,000.00 (two thousand United States dollars) for each day operations are performed by Charterer under the Nigerian Gulf Contract, which payment shall be the full consideration to Charterer for all work and services performed, labor, materials and equipment furnished and operations conducted by Charterer under the Nigerian Gulf Contract. . . .

* * *

[4]

* * *

10. This Agreement and all its terms and provisions are to be considered to be a Bahamian contract and shall be construed according to the laws of the Bahama Islands.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

TRANSWORLD DRILLING COMPANY, LIMITED

/s/ GEORGE B. PARKS

KERR-McGEE LIMITED

/s/ By F. C. LOVE

APPENDIX 10F

* * *

[1]

GENERAL RULES AND STANDARDS FOR ADMINISTRATIVE OPERATIONS OF TRANSWORLD DRILLING COMPANY OVERSEAS OPERATIONS

I. WORK SCHEDULE AND PAYROLL CHANGES

A. Expatriate Employees

1. Any proposed changes to the established complement or work schedule are to be forwarded to the Vice-President, Drilling Operations along with the recommendations and reasons for the change. After review by the Oklahoma City office, approval or disapproval will be returned to the Overseas office, including obtaining Operator approval when required.

2. Payroll

   a. For each new person hired by Transworld Drilling Company for loan to Transworld Drilling Company, Limited, etc., copies of Payroll Advices initiated by the Oklahoma City office will be mailed to the Overseas office. These should be filed as confidential information.

* * *

(4) Locally Hired Expatriate Employees.

Authority should be obtained from Oklahoma City before hiring new expatriate employees by an overseas office.

(5) Changing Grade and Salary.

Where time does not permit normal handling of the Payroll Advice, authority should be obtained from Oklahoma City by wire prior to making the change.

(6) Change of Country of Employment.

. . . Also, if Employment Agreement does not cover the new country, then secure a contract amendment from Oklahoma City and secure signature of the employee indicating his acceptance.

* * *

B. National Employees

1. Any proposed changes in the established complement or work schedule are to be forwarded to the Vice-President, Drilling Operations, along with the recommendations and reasons for the change. After review by the Oklahoma City office, approval

[3]

or disapproval will be returned to the Overseas office for further handling, including obtaining Operator approval when required.

2. Payroll. . . .

b. Proposed rate changes of classifications are to be approved first by the Oklahoma City office and second by the Operator. Promotions to fill vacancies within the approved schedule of classifications and rates do not require prior approval.

II. CHECK CASHING AND ADVANCES

* * *

B. Except for emergencies referred to above, no personal advances will be made without prior approval of the Oklahoma City office. Travel advances for Company business are not considered personal advances. However, travel advances must be accounted for by the employee submitting a Business Expense Report and the required receipts.

* * *

[4]

* * *

C. Oklahoma City Purchases

Certain purchases will be made in Oklahoma City for the particular overseas operation. The following procedures apply to these purchases:

1. A request for purchase will be prepared and assigned a number in the particular Overseas office, signed by the Manager who will forward it to the Assistant for Maintenance and Supply in Oklahoma City.

2. The Vice-President of Drilling Operations will approve, or disapprove and return the request for purchase. If approved, he will obtain any additional approvals required and make necessary distribution.

* * *

[5]

* * *

V. APPLICATION FOR EXPENDITURE (AFE) REQUIREMENTS

AFE's are required for:

Capital expenditures	$1,000 - up
Maintenance expense	$1,000 - up
Automotive expenditure	-0- - up

A. Preparation of an AFE

1. AFE's will be prepared in five copies, explaining the reason for, and nature of expenditure and forwarded to Oklahoma City office for further handling.

* * *

. . . Additionally, it is the responsibility of the Manager to know that changes in the plan of the original AFE are first cleared with the original

approval authority and that exchanges and/or substitutions of approved amounts are not made without the prior authority of the Oklahoma City office. . . .

* * *

[6]

* * *

VI. FINANCIAL APPROVAL AUTHORITIES

Approvals over the limits outlined below are subject to corporate limits of financial authorities and all requests for purchase are to be forwarded to the Vice-President of Operations, Oklahoma City.

* * *

[7]

* * *

A master schedule of all approved financial authorities will be maintained by the Oil and Gas Controller in Oklahoma City. He has been assigned the responsibility of keeping the schedule on a current basis and of comparing new or revised financial authorities for conformity with other maximum limits.

VII. FUNCTIONAL REPORTING RELATIONSHIPS

Accounting instructions and procedures shall be promulgated by the Oil and Gas Controller in Oklahoma City as required.

* * *

VIII. MAILING TO OKLAHOMA CITY OFFICE

Mail will be forwarded to Oklahoma City office, via air mail, in

[8]

one envelope or package. Each piece of mail within the envelope will be marked with name of person to whom it is directed.

Financial detail is due in the Oklahoma City office by the 10th of the month subsequent to the statement month.

IX. INTERPRETATION OF DRILLING CONTRACTS, PREPARATION OF CUSTOMER BILLINGS AND CONTRACTUAL COMMITMENTS

A. Any questions concerning the interpretation of the drilling contracts should be reduced to writing and forwarded by the Manager to the Oklahoma City office for review. . . . No changes in the drilling contract are to be made without prior consent of the Oklahoma City office.

* * *

C. Service Contracts or Commitments

* * *

2. Any proposed commitments for such services are to be subject to review by the Oklahoma City office and the draft of the agreement is to be submitted for review, comment

or approval prior to making commitment.

. . .

* * *

/s/ GRIER D. ZIMMERMAN
Grier D. Zimmerman
President

APPENDIX 10G

AGREEMENT

THIS AGREEMENT, made and entered into this 27th day of January, 1972, by and between Transworld Drilling Company, Limited, ("Employer"), and the undersigned employee, ("Employee").

WITNESSETH:

* * *

NOW, THEREFORE, in consideration of the mutual promises herein and the salary and other benefits payable to Employee hereunder, Employer does hereby employ the undersigned named Employee and Employee agrees to serve Employer as a Manager (or in such other capacity as Employer may from time to time require) on the following terms and conditions.

* * *

ARTICLE IV

CITIZENSHIP

Employer represents that he is a citizen of the United States and agrees to furnish Employer with satisfactory evidence of citizenship. If not furnished, this Employment Agreement shall become ineffective.

* * *

ARTICLE X

DISABILITY OR DEATH

(a) In lieu of all other benefits to which Employee might become entitled as a result of injury arising from an accident sustained in the performance of his duties under this contract, Employee shall be entitled to and agrees to accept Workmen's Compensation benefits covering accidents resulting in injury and/or death equivalent to the benefits provided under the laws of the State of Oklahoma. Employer shall have full subrogation rights for any and all payments made to the employee.

* * *

ARTICLE XI

NOTICES AND PAYROLL AUTHORIZATION

(a) Employee hereby authorizes and directs Employer in the event of accident to notify:

NAME	ADDRESS
Thomas C. Hall	13256 Atwater Avenue Alliance, Ohio

(b) Employee authorizes Employer to make the following disposition of his monthly net earnings, after all legal deductions as follows:

1. Deposit the balance each month in account of Employee in the following named bank:

   First National Bank Acct. No. 00580-3267
   (Name of Bank)

   101 S. Plaza Square, Canton, Ohio

* * *

ARTICLE XII

MISCELLANEOUS

(a) This Agreement shall be interpreted in accordance with the laws of the State of Oklahoma.

* * *

/s/ DONALD L. HALL
EMPLOYEE
Donald L. Hall

TRANSWORLD DRILLING
COMPANY, LIMITED

By: _____

APPENDIX 10H

NIGERIAN GULF OIL COMPANY

Gulf House
19 Tinubu Square
Private Mail Bag 2469
Lagos, Nigeria

J. A. Strand
Managing Director

Telephone: 23421
Cables: Nagoc, Lagos

Our Ref.: 605.10.02

5th February, 1969.

Transworld Drilling Company Ltd.,
Kerr McGee Building,
Oklahoma City, Oklahoma 73102,
U.S.A.

Dear Sirs,

Re: *Drilling Contract dated April 16 1964, Between Nigerian Gulf Oil Company, and Transworld Drilling Company Limited*

We are in receipt of your letter dated December 19, 1968, which was delivered to us January 23rd, 1969, regarding the above mentioned contract.

In response to the request contained in the penultimate paragraph of your letter:

(1) We hereby grant our consent to the assignment of the said contract from Transworld Drilling Company Limited to Kerr-McGee Limited.

(2) We hereby agree that the actual performance of work under the Contract shall be by Transworld Drilling Company (Nigeria) Limited, that is to say:

Kerr-McGee Limited has subcontracted performance of work under the contract to Transworld Drilling Company (Nigeria) Ltd.

However, in order to put all records straight, we would appreciate the executing and supply to us of a copy of:

(a) A document of assignment of said contract from Transworld Drilling contract to Kerr-McGee Limited.

(b) A document subcontracting performance of work under said contract from Kerr-McGee Limited to Transworld Drilling Company (Nigeria) Limited.

Very truly yours,
/s/ J. A. STRAND
J. A. Strand

RJG/rba

APPENDIX 10I

TRANSWORLD DRILLING COMPANY, LIMITED
INCORPORATED
In The Bahama Islands Under The Companies Act

Bahamas Address
330 Bay Street
P.O. Box 1447
Nassau, Bahamas

U.S.A. Address
Kerr-McGee Building
Oklahoma City,
Okla. 73102

February 10, 1969

Kerr-McGee Limited
Nassau, Bahamas

Re: Drilling Contract dated April, 1964 between Transworld Drilling Company Limited, as Contractor, and Nigerian Gulf Oil Company, as Company, covering drilling operations offshore Nigeria

Gentlemen:

This letter shall serve to formally confirm and evidence our assignment of the captioned drilling contract to you effective as of November 15, 1968. From and after such date you shall be considered to have been substituted for Transworld Drilling Company, Limited as the party contractor.

Very truly yours,

TRANSWORLD DRILLING COMPANY, LIMITED

/s/ GEORGE B. PARKS

ACCEPTED AND AGREED:

KERR-McGEE LIMITED

/s/ .By F. C. LOVE

APPENDIX 10J

TRANSWORLD DRILLING COMPANY, LIMITED

INCORPORATED

In The Bahamas Islands Under The Companies Act

Bahamas Address
330 Bay Street
P. O. Box 1447
Nassau, Bahamas

U.S.A. Address
Kerr-McGee Building
Oklahoma City,
Okla. 73102

February 10, 1969

Kerr-McGee Limited
Nassau, Bahamas
Transworld Drilling Company
(Nigeria) Limited
Lagos, Nigeria

Gentlemen:

Reference is made to our letter to Kerr-McGee Limited dated November 15, 1968, wherein Transworld Drilling Company, Limited ("Transworld") agreed to bareboat charter from Kerr-McGee Limited the mobil offshore drilling platform known as Transworld Rig 46. Transworld's charter of Rig 46 was effective simultaneously with the purchase of Rig 46 by Kerr-McGee Limited, which purchase was concluded on November 15, 1968.

As a part of the bareboat charter arrangements, transworld was employed by Kerr-McGee Limited to operate the rig after November 15, 1968 in drilling successive wells for Nigerian Gulf Oil Company under that certain drilling contract dated April 1964 which was assigned to Kerr-McGee Limited. On November 18, 1968 Trans-

world's Nigerian branch was deemed incorporated as a separate company, known as Transworld Drilling Company (Nigeria), Limited.

This letter shall serve to confirm and evidence the above arrangements and confirm and evidence that effective November 18, 1968, Transworld Drilling Company (Nifieria) Limited commenced the operation of the rig under said bareboat charter arrangements with Kerr-McGee Limited and assumed all rights and obligations of Transworld under said bareboat charter arrangements. Transworld Drilling Company (Nigeria), Limited will look solely to Kerr-McGee Limited for payment for all operations performed under the bareboat charter arrangements.

Very truly yours,

TRANSWORLD DRILLING
COMPANY, LIMITED

/s/ GEORGE B. PARKS

ACCEPTED AND AGREED:
KERR-McGEE LIMITED

By /s/ F. C. LOVE

TRANSWORLD DRILLING COMPANY
(NIGERIA), LIMITED

By /s/ GRIER D. ZIMMERMAN

APPENDIX 10K

GULF OIL COMPANY (NIGERIA) LIMITED

Gulf House
19 Tinubu Square
Private Mail Bag 2469
Lagos, Nigeria

J. A. Strand
Managing Director

Telephone: 23421
Cables: Nagoc, Lagos
Telex: 21314

Our Ref: 605.01.01

3rd July, 1969.

Transworld Drilling Company,
Kerr-McGee Building,
Oklahoma City, Oklahoma 73102
U.S.A.

Attention: Mr. George B. Parks

Gentlemen:

Re: Extension to Rig 46 Contract

The present term on the Transworld Rig 46 six-month extension agreement will expire on October 5, 1969. This is to advise you that upon expiration of this extension period we now request a six-month extension from October 6, 1969, through April 5, 1970, as if provided for in Clause 20.3 of the original Drilling Contract. This extension would be covered by present agreements including all amendments.

If this is agreeable to you, please indicate by signing and returning one copy of this letter.

Yours very truly,

Original signed by
R. J. Goeken

/s/ R. J. Goeken
Operations Manager

BBB/rba

Agreed: GEORGE B. PARKS

* See transmittal letter of 7/29/69 for changes to Kerr-McGee Limited.

APPENDIX 10L

KERR-McGEE LIMITED
INCORPORATED
In The Bahamas Islands Under The Companies Act

Bahamas Address
330 Bay Street
P.O. Box 1447
Nassau, Bahamas

U.S.A. Address
Kerr-McGee Building
Oklahoma City,
Okla. 73102

July 29, 1969

Gulf Oil Company (Nigeria) Limited,
Gulf House,
19 Tinubu Square
Private Mail Bag 2469,
Lagos, Nigeria.

Attention: Mr. R. J. Goeken, Operations Manager

Re: Extension to Rig 46 Contract

Gentlemen:

We have previously executed and returned letter agreement furnished by Gulf extending the Rig 46 Contract from October 6, 1969, through April 5, 1970. This letter agreement should properly recognize execution by Mr. Parks on behalf of Kerr-McGee Limited instead of Transworld Drilling Company. Would you please make this correction on the copy returned to you and we will also correct the copy we retained.

KERR-McGEE LIMITED

/s/ PAUL D. ROMANO
Paul Romano

APPENDIX 10M

GULF OIL COMPANY (NIGERIA) LIMITED
Gulf House
19 Tinubu Square
Private Mail Bag 2469
Lagos, Nigeria

L. A. Turner
Managing Director

Telephone: 50820
Telex: 21314
Cable: Gocon, Lagos

Our Ref: .....

18 August, 1977

Kerr-McGee Limited
Kerr-McGee Building
Oklahoma City, Okla. 73102
U.S.A.

Attn: Mr. Paul D. Romano—President

Gentlemen:

Re: Extension of Drilling Contract
Transworld - 46

Please find enclosed, a signed copy of your letter dated August 3, 1977, confirming your agreement to the extension of the above subject contract for thirty (30) days, commencing on November 1, 1977, and ending at midnight November 30, 1977.

Very truly yours,

/s/ W. W. ORR
W. W. Orr
Operations Manager

APPENDIX 10N

KERR-McGEE LIMITED
INCORPORATED
In The Bahama Islands Under The Companies Act

Bahamas Address
330 Bay Street
P.O. Box 1447
Nassau, Bahamas

U.S.A. Address
Kerr-McGee Building
Oklahoma City,
Okla. 73102

August 3, 1977

DISTRIBUTION:
Orig: Rig 46 Gulf Contract
cc: P. D. Romano
J. E. Gillespie
L. P. LeBron
J. F. Von Tungeln
R. G. Horner
R. C. McKiddy

Gulf Oil Company (Nigeria) Limited
Gulf House, 19 Tinubu Square
Private Mail Bag 2469
Lagos, Nigeria

Attention: Mr. L. A. Turner
Managing Director

Re: Extension of Drilling Contract—
Transworld Rig 46

Gentlemen:

This letter shall serve to confirm our agreement to the extension of the subject contract for a period of thirty

days (30), commencing on November 1, 1977, and ending at midnight November 30, 1977.

We ask that you sign and return one copy of this letter evidencing such agreement.

Very truly yours,

/s/ LEO P. LeBRON
Leo P. LeBron
Vice President

/cb

ACCEPTED AND AGREED TO THIS
18 DAY OF AUG., 1977.
GULF OIL COMPANY (NIGERIA) LIMITED
/s/ C. ANDERSON

APPENDIX 100

WU TWX ITT NYK

KERMACOKLACY

910 831 3252 OKLA CITY OKLA

LT

OKLAHOMA CITY OKLAHOMA 3-7-72 4:47 PM

DON HALL

TRANSWORLD

BOX 635

LAGOS (NIGERIA)

OCN-1603

ACKNOWLEDGE RECEIPT YOUR 28TH FEBRUARY MEMO REGARDING VISA AND PERSONNEL SITUATION STOP AT OUTSET WISH TO COMMENT THAT WE ARE MORE THAN A LITTLE SURPRISED BY YOUR REMARK THAT YOU SEE NO EXCUSE WHY WE CANNOT HAVE OUR EXPATRIATE QUOTA FILLED WITH SIX ASSISTANT DRILLERS AND TWO CRANE OPERATORS AS PROVIDED BY OUR CONTRACT STOP FURTHER AM EXTREMELY CONCERNED WITH FACT THAT YOU HAVE ONLY THREE DRILLERS AND TWO EXPATRIATE ASSISTANT DRILLERS PRESENTLY IN NIGERIA STOP WE HAD HOPES AFTER HIRING JOHNSON THAT VISA APPROVALS WOULD SOMEHOW BE EXPEDITED BUT APPEARS THAT WE ARE BACK IN SAME OLD RUT IN THAT THE VISA APPLICATIONS ARE PURPORTEDLY NOT

BEING RECEIVED IN LAGOS FROM WASHINGTON NIGERCON STOP IF YOU HAVE ANY SUGGESTION WHATSOEVER TO EXPEDITE THESE VISAS WE WOULD BE DELIGHTED TO HEAR ABOUT THEM STOP WE HERE ALSO ASSUME THAT YOU WERE AWARE OF THE CONSTANT LABOR SHORTAGE WITH WHICH WE HAVE CONDUCTED THE NIGERIAN OPERATION OVER THE LAST SEVERAL YEARS STOP WE HAD HOPED JOHNSON WOULD HELP ALLEIVATE THIS SITUATION AND PERHAPS WE HAVE NOT GIVEN HIM ENOUGH TIME TO BE EFFECTIVE STOP IN ANY EVENT IF EITHER YOU OR HE ARE ABLE TO DEVELOP A BETTER METHOD TO EXPEDITE THESE VISAS PLEASE ADVISE US IMMEDIATELY STOP REPEAT THESE APPLICATIONS ARE DILIGENTLY MADE HERE AND SUBMITTED TO WASHINGTON STOP IT IS AND HAS BEEN VERY DIFFICULT FOR US TO DETERMINE WHEN OR IF OR HOW THE SUBJECT VISA APPLICATIONS ARE PASSED ON TO LAGOS STOP IF YOU CAN DEVELOP A WAY TO BETTER TRACE THESE VISAS WOULD APPRECIATE YOUR TELLING US HOW TO DO IT STOP ONE POSSIBLE HELPFUL APPROACH IS FOR YOU TO BETTER UTILIZE COPIES OF VISA APPLICATIONS THAT ARE SUPPLIED TO YOU CONCURRENTLY WITH BEING SENDING YOU THE SAME ADVICE BY CABLE STOP . . . YOU AND OR JOHNSON TO PHYSICALLY TAKE THIS INFORMATION TO LAGOS IMMIGRATION AND TO HAVE THEM IN TURN JOG NIGERCON IN WASHINGTON STOP

HAVE NOT RECEIVED RESPONSE TO MY OCN1594 OF 24TH FEBRUARY RELATIVE TO LAGOS AND WARRI LIVING COSTS STOP ALSO PLEASE IMMEDIATELY ACKNOWLEDGE RECEIPT OF OUR UNNUMBERED WIRE DATED FIRST MARCH REGARDING TRANSFER OF FUNDS TO BANK STOP PLEASE ADVISE STATUS OF THE DAMAGES SUSTAINED TO GENERATOR AS OUTLINED IN YOUR L746 AND ABOUT WHICH WE HAD INQUIRED ON OUR OCN1599 STOP ADDITIONALLY OUR OCN1601 INQUIRED RELATIVE TO WHETHER OR NOT OWEN WOULD STAY OVER UNTIL DUTTWEILER VISA APPROVED AND ALSO THAT YOU NEEDED TO RETRANSMIT YOUR L748 CABLE WHICH ARRIVED HERE SCRAMBLED STOP

WITH REGARD TO 28TH FEBRUARY MEMO COVERING SINGLE STATUS MEDICAL COST REIMBURSEMENT EXAMINATION OF OUR RECORDS INDICATES ONLY CRANE OPERATOR ROME AND DRILLER ALEXANDER AND RMS KIBODEAUX HAVE SIGNED CONTRACTS REQUIRING US TO PAY REASONABLE MEDICAL EXPENSES STOP BALANCE OF EMPLOYEES AGREEMENTS DO NOT HAVE THIS PROVISION AND IN FACT THE ABOVE THREE ALSO SHOULD NOT STOP WOULD RATHER WE NOT COVER THIS MATTER BY MEMO AS OUTLINED BY YOU AND SUGGEST YOU DO SO ON A VERBAL BASIS STOP WE WILL SEND GROUP HEALTH PLAN LITERATURE AND CLAIM FORMS STOP

REGARDING YOUR 28TH FEBRUARY TRAILER CAMP MEMO CONCUR WITH YOUR SUGGESTION TO BUILD ROOF OVER ONE OF OUR TRAILERS ON TRIAL BASIS UTILIZING JUNK DRILL PIPE FOR VERTICAL SUPPORTS STOP

RELATIVE TO YOUR EKU HOSPITAL PREFER NOT TO MAKE CONTRIBUTION TO SAME PARTICULARLY SINCE THUS FAR ONLY GRAPEVINE RUMOR REGARDING MAGNITUDE OF REQUESTED DONATION STOP INSTEAD PREFER TO PAY REASONABLE AND EQUITABLE FEE EACH TIME ONE OF OUR EMPLOYEES OR MEMBERS OF THEIR FAMILIES ARE TREATED STOP SUCH MEDICAL FEES OF COURSE TO BE RECOVERABLE UNDER OUR GROUP HEALTH PROGRAM WHEN NOT JOB INCURRED STOP WOULD ENCOURAGE OUR PEOPLE TO CULTIVATE THIS APPARENTLY PREFERABLE MEDICAL FACILITY STOP

AM SOMEWHAT CONCERNED SINCE WE HAVE NOT RECEIVED ANY CORRESPONDENCE FROM YOU SINCE MARCH SECOND AND AM WONDERING WHETHER OR NOT YOU HAVE BEEN ILL STOP IF SO SOMEONE IN LAGOS OFFICE SHOULD SO ADVISE US STOP IN ANY EVENT WE HERE REQUIRE A DRILLING REPORT FROM EACH OF OUR OPERATIONS AT LEAST THREE TIMES PER WEEK STOP KEEP IN MIND THAT ALL OUR CABLES ARE NUMBERED AND YOU SHOULD CONFIRM THAT YOU ARE RECEIVING ALL OUR CABLE CORRESPONDENCE BY FOLLOWING NUMERICAL SEQUENCE OF SAME STOP ADDITION-

ALLY PLEASE KEEP US ADVISED RELATIVE TO YOUR MOVEMENTS TO AND FROM WARRI THE RIG AND LAGOS SO WE CAN BETTER UNDERSTAND YOUR CORRESPONDENCE OR LACK THEREOF STOP WISH TO NOTE THAT DIRECT CABLE CORRESPONDENCE BETWWEN OKLAHOMA CITY AND WARRI IN THE PAST HAS MET WITH CERTAIN DEGREES OF UNRELIABILITY AND WOULD DISCOURAGE FUTURE USE OF SAME STOP WE HAVE ALSO NOTED ONE OF YOUR MESSAGES CAME VIA ESSECOR TELEX AND WOULD APPRECIATE YOUR ADVISING IF WE SHOULD UTILIZE SAME AND IF ESSECOR CAN RECEIVE UNATTENDED MESSAGES AFTER YOUR WORKING HOURS STOP

REGARDING YOUR SIX MONTH AS OPPOSED TO 24 MONTH CONTRACT JERRY HAS MADE COMPARISON AND PLACED SAME IN MAIL TO YOU STOP HIS COMPARISON SEEMS TO INDICATE 24 MONTHS ADVANTAGEOUS IN YOUR CASE STOP

WOULD MUCH APPRECIATE YOUR IMMEDIATE ACKNOWLEDGEMENT OF THIS LENGTHY CABLE STOP

ROMANO

WU TWX ITT NYK

KERMACOKLACY

APPENDIX 10P

PLAINTIFF'S EXHIBIT 1

5. KERR-McGEE CORPORATION

Directors 1972-1973	*Dates of New Corp. Book Issues*	
Peter Colefax		
Grady D. Harris, Jr.		
Earle M. Jorgensen		
Edwin L. Kennedy		
Breene M. Kerr		
Robert S. Kerr, Jr.		
Guy C. Kiddoo	1-1-72	5-4-72
F. C. Love		
D. A. McGee		
J. B. Saunders		
A. T. F. Seale		
Dean Terrill	1-1-72	5-4-72
James E. Webb		
James J. Kelly	5-4-72	
George B. Parks	5-4-72	

Officers 1972-1973

D. A. McGee—Chairman of the Board & Chief Executive Officer	
F. C. Love—President	1-1-72/2-28-73
James J. Kelly—President	3-1-73/
J. B. Saunders—Vice Chairman of the Board	1-1-72/3- 5-72
George B. Cobb—Executive Vice President	
James J. Kelly—Executive Vice President	1-1-72/2-28-73
George B. Parks—Executive Vice President	
J. H. Barksdale—Executive Vice President	3-1-73/
A. T. F. Seale—Senior Vice President	1-1-72/6-29-72

Willard P. Scott—Senior Vice President & Secretary 6-1-73

Willard P. Scott—Vice President, Finance & Secretary 3-1-73/6-29-73

Willard P. Scott—Vice President, General Counsel & Secretary 1-1-72/2-28-73

* * *

G. B. Kitchel—Vice President, Drilling Contracts

* * *

P. A. Puttroff—Vice President, Administration 3-1-73

* * *

PLAINTIFF'S EXHIBIT 2

3. TRANSWORLD DRILLING COMPANY (DELAWARE) (Wholly-owned subsidiary of Kerr-McGee, Incorporated)

Directors 1972-1973

	Dates of New Corp. Book Issues	Address
F. C. Love	1-1-72/2-28-73	U.S.A.
George B. Parks		U.S.A.
A. T. F. Seale	1-1-72/6- 5-72	U.S.A.
Grier D. Zimmerman	6-6-72	U.S.A.
D. A. McGee	3-1-73	U.S.A.
James J. Kelly	7-2-73	U.S.A.

Officers 1972-1973

George B. Parks—Chairman of the Board & Chief Executive Officer		U.S.A.
Grier D. Zimmerman—President		U.S.A.
J. W. Greely—Vice President		U.S.A.
George B. Kitchel—Vice President	(Houston, Texas)	U.S.A.
Paul D. Romano—Vice President		U.S.A.
Willard P. Scott—Secretary		U.S.A.
D. A. Watkins—Treasurer		U.S.A.
Carter G. Dudley—Assistant Secretary		U.S.A.
William E. Heimann—Assistant Secretary		U.S.A.
P. A. Putroff—Assistant Treasurer		U.S.A.
R. D. Robins—Assistant Treasurer		U.S.A.

PLAINTIFF'S EXHIBIT 3

1. TRANSWORLD DRILLING COMPANY, LIMITED [Bahamian Corporation] (Wholly owned subsidiary of Kerr-McGee Incorporated)

Directors 1972-1973

	Dates of New Corp. Book Issues	Address
Robert H. Pringle	1-1-72/10-14-73	Bahamas
F. C. Love	1-1-72/2-28-73	U.S.A.
George B. Parks		U.S.A.
P. J. Rafferty		Bahamas
J. D. Bradshaw		Bahamas
D. A. McGee	3-1-73	U.S.A.
T. A. Barnham	4-30-73/10-14-73	Bahamas
W. J. Owen	4-30-73/10-14-73	Bahamas
J. J. Holmes	10-15-73	Bahamas
S. J. Coleman	10-15-73	Bahamas
L. M. Forbes	10-15-73	Bahamas

Officers 1972-1973

George B. Parks—Chairman of the Board		U.S.A.
Grier D. Zimmerman—President		U.S.A.
J. W. Greely—Vice President		U.S.A.
Paul D. Romano—Vice President		U.S.A.
George B. Kitchel—Vice President	(Houston, Texas)	U.S.A.
J. D. Bradshaw—Secretary	1- 1-72/ 4-30-73	Bahamas
T. A. Barnham—Secretary	5- 1-73/10-14-73	Bahamas
P. J. Rafferty—Treasurer	1- 1-72/ 9- 4-73	Bahamas

W. J. Owen—Treasurer	9- 5-73/10-14-73	Bahamas
J. J. Holmes—Secretary to Treasurer	10-15-73	Bahamas
P. A. Putroff—Assistant Secretary & Assistant Treasurer		U.S.A.
Willard P. Scott—Assistant Secretary & Assistant Treasurer		U.S.A.
D. A. Watkins—Assistant Secretary & Assistant Treasurer		U.S.A.
Carter G. Dudley—Assistant Secretary		U.S.A.

PLAINTIFF'S EXHIBIT 4

2. TRANSWORLD DRILLING COMPANY (NIGERIA), LIMITED [Nigerian Corporation] (Wholly owned subsidiary of Transworld Drilling Company, Ltd.)

Managing Director 1972-1973

	Dates of New Corp. Book Issues	Address
R. H. Mueller	1-1-72/2-21-72	Nigeria
Don Hall	2-22-72	Nigeria
Directors 1972-1973		
George B. Parks		U.S.A.
Grier D. Zimmerman		U.S.A.
Paul D. Romano		U.S.A.
James W. Greely		U.S.A.

* * *

Don Hall	2-22-72	Nigeria

APPENDIX 10Q

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended Dec. 3, 1973

Commission file number 1-3939

KERR-McGEE CORPORATION
(Exact name of registrant as specified in its charter)

A DELAWARE CORPORATION	73-0311467
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer identification No.)
KERR-McGEE CENTER, OKLAHOMA CITY, OKLAHOMA	73102
(Address of principal executive offices)	(Zip code)

* * *

Item 4. Parents and Subsidiaries

The following are subsidiaries of the Company at December 31, 1973, all of which are included in the consolidated financial statements.

State of Incorporation	Shares Outstanding	Number of Shares	Percent of Class	Percent of Voting Stock
Transworld Drilling Company				
Common Stock B $2.86 par value				
Delaware	50,000	50,000	100	100
Transworld Drilling Company, Limited				
Common Stock B$2.86 par vale				
Bahama Islands	10,000	10,000	100	100

* * *

Other subsidiaries, the names of which are omitted, considered in the aggregate as a single subsidiary, do not constitute a significant subsidiary. [Transworld Nigeria was not listed and was "omitted."]

APPENDIX 11

[1]

AFFIDAVIT RE NIGERIAN MARITIME INJURY LAW

Robert L. Leggett being first duly sworn deposes and says that he is a Member of the District of Columbia and California Bars for the past 30 years. That he is experienced as a trial lawyer in State and Federal Courts in negligence and workmen's compensation cases. That he has served for 16 years as a Member of the United States Congress on the Merchant Marine Committee of the House of Representatives and that for the past two years has served as President of the Joint Maritime Congress, an amalgamate of all U. S. Flag Shipping Companies and the Marine Engineer's Union, and that he is familiar with Jones Act cases under 46 USC 688, that he is knowledgeable with respect to Nigerian Law, both by conducting international transactions with said country and by frequently reviewing the laws and decisions of said country as contained in the United States Library of Congress in Washington, D. C. and by discussing the same with visiting legal scholars.

. . . In general where the courts have jurisdiction, the rules of stare decises are not spelled out adequately so all decisions are nearly de novo. There are no legal encyclopedias or digests, but annual collections of rare random decisions. Most decisions that allow damages for inquiry would not be adequate by Western standards.

By custom the people of Nigeria do not have a well established Negligence law because persons surviving

those struck down by negligence consider most recoveries to be "blood money" and are frowned upon.

[2]

When Nigeria became independent of Britain in 1959, all British statutes terminated. The theme of some statutes have been reenacted. During the 70's, Civil War tore the country of Nigeria apart including its legal system. This is the current basic reason for the fortuitous status of that country's laws.

Wrongful death actions in Nigeria are based on the "Fatal Accidents Acts" of the various states. All require a showing of negligence, no contributory negligence and proximate cause. Most States have a 3 year statute of limitation and lost earnings are usually regarded maximum 8 to 12 years au futoro. . . .

Where action is brought by an injured servant against his master, . . .

A workman who takes dangerous risks generally assumes the risk normal in the employment except when there is a statute covering the employment.

[3]

Nigeria does not have anything comparable to our *Jones Act* type recoveries for a seaman. Injuries in territorial waters would be covered by regular Master and Servant Law and Workmens Compensation ORD 1957.

* * *

In any Negligence action by an employee, the burden of proof is on the employee to show negligence, and

contributory negligence last clear chance, and assumption of risk are defenses. St/limitation is 6 years.

Damages under Nigerian Law would generally be considered inadequate by western standards.

In *Salihu v. Tin* 1959 damages for amputated left leg were reduced from 2000 pounds to 750 pounds, (English pound equals roughly $2.00) on the theory "that a Nigerian was worth roughly 1/3 an Englishman!"

* * *

In *Agaba v. Otobasin* 1961 a permanently deformed hip with permanent limp resulted in a damage verdict being reduced on appeal from 3830 pounds to 2000 pounds.

In 1981 in the death of a 20 year old man by electric shock, damages in wrongful death action were reduced by the House of Lords from 2000 to 1000 Niara.

Acceptance of recovery under Nigerian Workmans Compensation Law precludes any other recovery. *Segun v. West Africa.*

[4]

Under Workmans Compensation leg. .ation, Nigeria allows 40 Niara/mo maximum temporary compensation plus 50 Niara medical travel and 200 Niara for *all medical bills.* Permanent compensation is allowed at the maximum 3200 Niara plus 800 Niara for a house keeper and an assumed 54 month max. compensation period. . . .

As a result nobody can rely on any right to get permanent compensation under the law and the maximum recovery for permanent injury or death is set at 3200 Niaras.

* * *

A typical Nigerian resolution is attached. As is indicated John Erhurare, a Nigerian seaman under U. S. definition suffered amputation of one leg in an industrial oil drilling accident. The settlement shows that this claim was worth 2200 Niara in Nigeria and that settlement effectively precludes any other recovery in that country against Transworld Drilling (NIG) Ltd.

The same would be true for a similar settlement in a death case.

The tenor of Nigerian law is complete uncertainty, uncertainty of administration, procedure and damages are generally considered de minimis.

/s/ ROBERT L. LEGGETT
Robert L. Leggett

/s/ CATHERINE M. JOHN
Subscribed and Sworn to Before Me
This 7th Day of January, 1982
District of Columbia

My Commission Expires October 31, 1982

DEFENDANT'S EXHIBIT 3

THE WORKMEN'S COMPENSATION ORDINANCE, 1957

CAP 222 LAWS OF THE FEDERATION OF NIGERIA AND LAGOS

FORM 1 (to be prepared in duplicate, one copy to be kept by the Employer and one copy by the Workman)

Agreement by employer to pay compensation to a workman where injury results in total/partial permanent incapacity, where the extent of the disability has been finally ascertained.

AN AGREEMENT made the 29th day of August 1973 BETWEEN TRANSWORLD DRILLING COMPANY (NIG) LTD. of WARRI (hereinafter called the employer of the one part, and MR. JOHN ERHURARE hereinafter called the workman) of the other part.

WHEREAS on the (1) 21st day of February 1973 the workman (2) (a person unable to read and understand writing in the English language) was employed by the employer in the capacity of (3) FLOORMAN.

AND WHEREAS on the said 21st day of February 1973 at (4) RIG 46 ESCRAVOS in the Division of the WARRI Area/Province personal injury by accident alleged to have arisen out of and in the course of his employment was caused to the workman, which said injury has resulted in total (5) permanent incapacity to the workman and in respect of which he claims that

the employer is liable under the Workman's Compensation Ordinance 1957 to pay him compensation.

AND WHEREAS the permanence of the said incapacity has been established and the extent of such incapacity has been finally ascertained and determined at (6) SEVENTY PERCENT (70%) videlicet. (7)

AND WHEREAS pursuant to the provisions of section 18 of the said Ordinance and in order to avoid litigation in respect of the said claim the parties hereto have agreed that the liability (if any) shall be finally satisfied and extinguished by the compensation hereinafter agreed to be made,

NOW IT IS HEREBY AGREED That the employer shall pay to the workman the sum of (8) TWO THOUSAND TWO HUNDRED FORTY NIARA ($2,240.00) dollars and the workman will accept the said sum in full discharge of all liability of the employer to pay compensation under the said Ordinance,

As witness our hands the day and year first above written.

Signed by the above-named employer Transworld Drilling Co. (NIG) Ltd. By C. L. COWEN in the presence of J. J. CABLE.

Signed by the above-named workman JOHN A. ERURARE.

* * *

APPENDIX 12

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 80-2378

Summary Calendar

UGBONE JOHNSON,
Plaintiff-Appellant,

v.

McDERMOTT OVERSEAS, INC., ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Texas

---

(OCTOBER 16, 1981)

Before CHARLES CLARK, Chief Judge, RUBIN and SAM D. JOHNSON, Circuit Judges.

PER CURIAM:

Ugbone Johnson appeals from the district court's order dismissing J. Ray McDermott & Co. on the grounds of *forum non conveniens* and dismissing McDermott (Nigeria) Limited, McDermott Overseas, Inc. and Oceanic

Contractors, Inc. for lack of personal jurisdiction. We affirm.

Johnson, a Nigerian citizen, was employed by McDermott (Nigeria) Limited (MNL), a Nigerian corporation, to work on a barge stationed off the coast of Nigeria. The barge was owned by J. Ray McDermott & Co. (McDermott), a Delaware corporation, and flew the American flag. The barge was, however, bareboat chartered to Oceanic Contractors, Inc. (Oceanic), a Panamanian corporation. Oceanic is a wholly owned subsidiary of McDermott. Sixty percent of the stock of MNL is held by McDermott Overseas, Inc. (MOI), a Panamanian corporation, which is in turn a wholly owned subsidiary of McDermott.

The case arose when the appellant broke his leg while working for MNL on McDermott's barge. Appellant initially brought suit against McDermott in the District Court of Texas under the Jones Act and the general maritime law. When McDermott moved to dismiss the case on the ground of *forum non conveniens,* the appellant amended his complaint to include MNL, MOI and Oceanic as defendants.

The district court granted McDermott's motion to dismiss the suit against it on the grounds of *forum non conveniens.* The court found that under the tests articulated in Lauritzen v. Larsen, 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1953), and Hellenic Lines v. Rhoditis, 398 U.S. 306, 90 S.Ct. 1731, 26 L.Ed.2d 252 (1970), American law should not be applied to the appellant's claim. The court reasoned that:

> [t]he place of the wrongful act in Nigeria; the allegiance of the injured seaman in Nigeria; the al-

> legiance of the owner *pro hac vice* [Oceanic] is Panama; there is an available foreign forum; the situs of the employment contract is Nigeria; the base of operations of the owner *pro hac vice* is either Brussels, Belgium or Lagos, Nigeria . . . Only the law of the ship's flag and the law of the forum, both of which are United States law, support application of United States maritime law. The greater weight of the above articulated factors favors the application of Nigerian law.

The court further found that (1) the proof of the case was in Nigeria, (2) transporting the witnesses from Nigeria would be prohibitively expensive, and (3) compulsory process over Nigerian witnesses was unavailable. Based on these findings the suit against McDermott was dismissed.

The appellant contends that in considering the "base of operations," a factor used in determining the applicable law, the district court should have focused on McDermott, the owner of the barge, rather than Oceanic, the bareboat charterer. Appellant argues that if the court had considered McDermott's operations, it would have found that American law applied and would have retained jurisdiction. *See* Chiazor v. Transworld Drilling Co., 648 F.2d 1015, 1018 (5th Cir. 1981). We disagree.

In *Chiazor,* this court recently affirmed the trial judge's dismissal, for *forum non conveniens,* of a suit whose facts are almost identical to those in the present case. In *Chiazor,* as in this case, a Nigerian citizen had been employed by a Nigerian corporation, which was also a subsidiary of an American corporation. The plaintiff had signed a contract in Nigeria and had been injured while working on a vessel stationed off the Nigerian coast. The

court in *Chiazor* found that even if the base of operations were considered to be that of the American parent rather than that of the foreign subsidiary, American law should not be applied. Thus, even if we accepted appellant Johnson's argument that the true base of operations in this case was the United States, *Chiazor* still requires us to affirm the district court's dismissal of McDermott.[1]

The appelant also contends that the district court erred in dismising MNL, MOI and Oceanic for lack of personal jurisdiction. We need not reach this contention. When MNL, MOI and Oceanic initially moved to dismiss the complaint against them, they contended that the court lacked personal jurisdiction and, alternatively, that the complaint should be dismissed for *forum non conveniens.* The district court did not reach the issue of *forum non conveniens* because it found that it lacked sufficient contacts to assert jurisdiction over the defendants. Because the position of MNL, MOI and Oceanic is the same as that of McDermott, we affirm the trial court's dismissal on the ground of *forum non conveniens.* The District Court in Texas is an improper forum for the foreign subsidiaries, MNL, MOI and Oceanic just at it is for McDermott, their American parent.

AFFIRMED.

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1. Castanho v. Jackson Marine, Inc., 650 F.2d 546 (5th Cir. 1981) (per curiam) does not require a different conclusion. In *Castanho,* when the trial court denied the defendant's motion to dismiss for *forum non conveniens,* the defendant sought review of the trial court's decision by a writ of mandamus. Thus, the issue before this court in *Castanho* was not simply whether the trial court had abused its discretion but whether there was such an abuse of discretion that mandamus should issue. Not only was the issue in *Castanho* different from that in *Chiazor,* but each case also reflects the latitude which this court has accorded the discretion of the trial judge in deciding whether to grant or deny such a motion.

APPENDIX 13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 77-1604

UGBONE JOHNSON

vs.

J. RAY McDERMOTT & COMPANY, INC.,
McDERMOTT OVERSEAS, INC.,
McDERMOTT (NIGERIA) LTD.
and OCEANIC CONTRACTORS, INC.

MEMORANDUM AND ORDER

Before this Court are Defendants McDermott Overseas, Inc., McDermott (Nigeria) Ltd., and Oceanic Contractors, Inc.'s Motion to Dismiss for lack of *in personam* jurisdiction under Rule 12(b) Fed. R. Civ. P. Also before this Court is Defendant J. Ray McDermott & Company, Inc.'s Motion to Dismiss under the doctrine of *forum non conveniens.*

Plaintiff, Ugbone Johnson, a Nigerian citizen, brings Jones Act and general maritime claims under this Court's maritime and diversity jurisdiction. The Defendants in this case are J. Ray McDermott & Company, Inc. (JRMc), a Delaware corporation with its principal place of business in New Orleans, Louisiana and its following subsidiaries: McDermott Overseas, Inc. (MOI), a Panamanian corporation wholly owned by JRMc; McDermott (Nigeria) Ltd. (MNL), a Nigerian corporation, sixty

percent of which is owned by MOI and forty percent of which is owned by Nigerian nationals; and Oceanic Contractors, Inc. (OCI), a Panamanian corporation wholly owned by JRMc.

At the time of the incident made the basis of this lawsuit, Plaintiff alleges that he was a seaman aboard the vessel, "Derrick Barge 24", in the waters off the coast of Nigeria. While working on the barge, on or about August 19, 1976, Plaintiff claims that he was injured when he became entangled in ropes and was pulled into the air above the deck. The "Derrick Barge 24" is owned by JRMc and flies the U.S. flag; however, at the time of the accident in question, it was under a bareboat charter to OCI. Plaintiff subsequently received Worker's Compensation benefits under the laws of Nigeria; however, he brings his action to recover for injuries received for the alleged negligence of the Defendants under the Jones Act, 46 U.S.C. § 688, and under general maritime law.

* * *

Plaintiff advances an alter ego argument, claiming that proper *in personam* jurisdiction over the parent corporation, JRMc, may be imputed into its subsidiaries. *See Reul v. Sahara Hotel,* 372 F. Supp. 995 (S.D. Tex. 1974). This Court will not quickly disregard separate corporate entities at the mere incantation of the term "alter ego". Plaintiff must show that the parent corporation so totally dominates the subsidiary, that the subsidiary manifiests no separate corporate interests of its own and functions solely to achieve the purposes of the parent corporation. *Krivo Industrial Supply Co. v. National Distillers and Chemical Corp.,* 483 F.2d 1098, 1106 (5th

Cir. 1973). Complete ownership by the parent of its subsidiary does not warrant disregarding the corporate separateness of the entities, *Dematteos v. Texaco,* 562 F.2d 895, 902 (3rd Cir.) *cert. denied,* 435 U.S. 904 (1977); moreover, the utilization of a common name, identity of officers or joint advertising literature by separate corporations does not necessarily unite the two corporations for all purposes. *See e.g., Overstreet v. Southern Railway Co.,* 371 F.2d 411, 412 (5th Cir.), *cert. denied,* 387 U.S. 912 (1967); *Turner v. Jack Tar Grand Bahama Ltd.,* 353 F.2d 954, 956 (5th Cir. 1965).

In the present case, as exhibited by sworn affidavits and jurisdictional discovery on file, it is apparent that while MOI, MNL, and OCI were all subsidiaries of JRMc, they maintained separate corporate existence and purpose. *See* Davis Depo. pp. 70-119. Furthermore, this Court finds a dearth of control over the day-to-day operations of the subsidiaries by the parent corporation, JRMc, and this lack of control tends to negate any inference of alter ego. *See Coles v. Humble Oil and Refining Company,* 348 F. Supp. 1240, 1243 (S.D. Tex. 1972); Davis Depo. pp. 195-96. Thus, this Court concludes that JRMc is a true multi-national corporation with foreign subsidiary corporations and that JRMc's control over its subsidiaries, while substantial, is insufficient to impute *in personam* jurisdiction over the subsidiaries.

* * *

By order of this Court dated August 22, 1979, Plaintiff's cause of action against JRMc was dismissed under the doctrine of *forum non conveniens.* This order was subsequently set aside to allow further jurisdictional dis-

covery. The additional discovery that has been made has not persuaded this Court that its earlier Memorandum and order was incorrect, and it is hereby reinstated and incorporated into this Memorandum and Order. Therefore, that part of Plaintiff's cause of action against J. Ray McDermott & Company, Inc., is dismissed under the doctrine of *forum non conveniens.*

It is therefore ORDERED, ADJUDGED and DECREED that Defendants McDermott Overseas, Inc., McDermott (Nigeria) Ltd., and Oceanic Contractors, Inc.'s Motion to Dismiss is hereby GRANTED and Plaintiff's Complaint as it pertains to them is DISMISSED for lack of *in personam* jurisdiction.

It is further ORDERED that this Court's Memorandum and Order dated August 22, 1979 is hereby reinstated and Defendant J. Ray McDermott & Company, Inc.'s Motion to Dismiss is GRANTED and that part of Plaintiff's Complaint against J. Ray McDermott & Company, Inc. is DISMISSED under the doctrine of *forum non conveniens.*

Signed this 13th day of November, 1980.

/s/ ROBERT O'CONOR, JR.
Robert O'Conor, Jr.
United States District Judge

APPENDIX 14

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. H-77-1706

JOHN IKESUME

vs.

J. RAY McDERMOTT & COMPANY, INCORPORATED, et al.

MEMORANDUM AND OPINION

Pending before the Court are Defendant's Motion to Dismiss, Plaintiff's Motion for Leave to File an Amended Complaint, and Plaintiff's Motion to Compel Answers and Produce Documents.

Plaintiff, a Nigerian citizen, claims injury resulting from an accident which occurred on a barge off the Nigerian Coast. He invokes Jones Act (46 U.S.C. § 688) and general maritime jurisdiction over Defendant J. Ray McDermott and Co., Inc., a Delaware corporation with offices in New Orleans and in Houston.

The defendant, having admitted ownership of the barge in its original answer, later filed an amended answer which denied ownership in itself and attributed ownership to Marine Contractors, Inc., a Panamanian corporation wholly owned by defendant. On the basis of this amended answer, defendant filed a motion to dismiss for lack of Jones Act jurisdiction or in the alternative dismissal *forum non conveniens*. Plaintiff opposes the mo-

tion to dismiss, and contends that in light of defendant's amended answer it should be granted leave to file an amended complaint naming as defendants Marine Contractors, Inc., as well as several other subsidiaries of J. Ray McDermott and Co., Inc.

The initial inquiry here is whether we have Jones Act jurisdiction. If the Jones Act applies, the Court will not dismiss under the doctrine of *forum non conveniens. Antypas v. Cia. Maritima San Basilio, S.A.*, 541 F.2d 307 (2d Cir. 1976), *cert. denied,* 429 U.S. 1098 (1977); *Barthalomew v. Universe Tankships, Inc.*, 263 F.2d 437 (2d Cir.), *cert denied,* 359 U.S. 1000 (1959). See also *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501 (1947). If the Jones Act does not apply, then the Court can consider whether the traditional *forum non conveniens* factors warrant dismissal of the general maritime claim.

Although the Jones Act contains no express jurisdictional limitations, its application is appropriate only if there are substantial contacts linking the plaintiff to this forum. In *Hellenic Lines Ltd. v. Rhoditis,* 398 U.S. 306 (1970), and *Lauritzen v. Larsen,* 345 U.S. 571 (1953), the Supreme Court identified the factors to be considered in determining whether the requisite substantial contacts exist. These factors are: 1) the place of the wrongful act, 2) the law of the ship's flag, 3) the domicile of the injured seaman, 4) the allegiance of the ship owner, 5) where the shipping articles were signed, 6) inaccessibility of the foreign forum, 7) the law of the forum, and 8) the base of operations of the ship owners. No one factor is dispositive, nor does the absence of several compel a conclusion that the Jones Act does not apply. *Barthalomew v. Universe Tankship, Inc.*, 263 F.2d 437 (2d Cir), *cert. denied,* 359 U.S. 1000 (1959).

Here a Nigerian plaintiff was employed and injured in Nigeria. The barge was flying a Panamanian flag and is owned, according to defendant's answer, by a Panamanian corporation (Marine Contractors, Inc.). There is justification for looking beyond a foreign flag and foreign incorporation, however, for a "cold objective look at the actual operational contacts. . . ." *Hellenic Lines Ltd. v. Rhoditis,* 398 U.S. 308, 90 S.Ct. 1731 (1970). Such a look may reveal that the base of operations, despite an elaborate structure of holding companies and operational subsidiaries, rests primarily in the U.S. parent, thus providing substantial contacts for purposes of the Jones Act.

The Court finds such contacts here. The McDermott group is comprised of several corporations which offer services related to the offshore recovery of oil. There is evidence of extensive interlocking directorates, and at least some of the American-based directors of foreign subsidiaries divide their time between U.S. offices and foreign work sites. These working directors provide direct operational contacts which are not attenuated merely because the foreign subsidiaries maintain their principal corporate offices in other countries. Of added significance is the centralized accounting services provided by the parent, the consolidated financial statement, and the corporate debt structure; all point to the substantial contacts necessary for Jones Act jurisdiction.

The Court emphasizes that it is not making a finding of corporate contacts for purposes of liability. Specifically we are not determining whether the subsidiaries are the "alter ego" of the parent; resolution of this question must properly await the further development of facts. For purposes of Jones Act jurisdiction, however, the Court concludes that the parent corporation exercised substantial

operational control over the subsidiaries. *Ramirez v. Zapata Offshore Co.*, 73-H-1239 (S.D. Tx., August 2, 1974).

Defendant urges that the Court focus its attention on the contacts between the parent and McDermott Nigeria Ltd., owned 60% by another McDermott subsidiary and 40% by two Nigerian nationals. Defendant asserts that McDermott Nigeria Ltd. was the actual operator of the barge, and hence the owner for Jones Act purposes, under the terms of a bareboat charter with Marine Contractors, Inc., the owner named in Defendants' amended answer, further, Defendant asserts that there are insufficient contacts with this particular subsidiary to find Jones Act jurisdiction. We have no such charter before us, but conclude that its existence is unimportant to the jurisdictional question resolved here. The contacts of the U.S. parent with this Nigerian subsidiary are substantial for Jones Act jurisdiction.

Because we find substantial contacts for purposes of the Jones Act, we must deny Defendant's motion to dismiss. . . .

* * *

It is hereby ORDERED that Defendant's Motion to Dismiss is DENIED, Plaintiff's Motion for Leave to File its Second Amended Complaint is GRANTED, and Plaintiff's Motion to Compel Production of Documents is GRANTED.

SIGNED and ENTERED this 22nd day of July 1980.

/s/ GEORGE E. CIRE
George E. Cire
United States District Judge

APPENDIX 15

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

NO. S-78-19-CA

EDWARD OKE

v.

J. RAY McDERMOTT & CO., INC., ET AL

O R D E R

Plaintiff filed his original complaint in the above-captioned admiralty suit on January 30, 1978, asserting claims under both the Jones Act, 46 U.S.C. § 688, and general maritime law. Since the inception of this action, four amended complaints have been filed. Plaintiff's most recent pleading, filed on October 16, 1980, names five corporations as co-defendants. Those defendants have moved to dismiss the suit on various grounds, including lack of personal jurisdiction, lack of subject matter jurisdiction, insufficiency of service, improper venue, *forum non conveniens,* and failure to state a claim on which relief may be granted. . . .

* * *

I. FACTUAL BACKGROUND

A summary of the factual allegations which underlie this suit is necessary to put defendants' contentions into perspective. According to affidavits and other documentary evidence submitted to date, the incident which precipitated plaintiff's claim occurred on February 3, 1973.

On that date, Edward Oke was employed aboard "Derrick Barge No. 15", a vessel used in offshore construction when he suffered a serious and disabling injury. At the time of this incident, the vessel was located in navigable waters off the coast of Nigeria.

Mr. Oke's employer was McDermott (Nigeria), Ltd., a Nigerian corporation owned in virtual entirety by McDermott Overseas, Inc., a Panamanian corporation which, in turn, was a wholly-owned subsidiary of J. Ray McDermott & Co., Inc., a multinational corporation chartered in Delaware with its principal place of business in New Orleans, Louisiana. The vessel on which plaintiff's injury occurred was owned by Marine Contractors, Inc., another wholly-owned subsidiary of J. Ray McDermott & Co., Inc., incorporated in Panama. The activities of both McDermott (Nigeria), Ltd., plaintiff's employer, and Marine contractors, Inc., the owner of Derrick Barge No. 15, were overseen by Oceanic Contractors, Inc., a wholly-owned subsidiary of J. Ray McDermott & Co., Inc., incorporated in Panama, which coordinated all of McDermott's foreign subsidiaries from its office in Brussels, Belgium.

* * *

. . . Mr. Oke accepted the workmen's compensation payment tendered by his former employer and signed a receipt, along with a release discharging McDermott (Nigeria), Ltd. "and any other person or company associated therewith from all further claims arising from his employment."*

* * *

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* Under § 27 of the Workman's Compensation Law of Nigeria, an injured worker must make an election between pursuing his

. . . All five of the corporations listed above were named as defendants in accordance with plaintiff's theory that all of them had acted in concert as a single entity under the direction, supervision, and control of the parent company, J. Ray McDermott & Co., Inc. . . .

* * *

II. COMPLEXITY OF JURISDICTIONAL ISSUES.

The various grounds for dismissal asserted by defendants center around the interrelationship between the parent company, J. Ray McDermott & Co., Inc., and its foreign subsidiaries, McDermott (Nigeria), Ltd., McDermott Overseas, Inc., Marine Contractors, Inc., and Oceanic Contractors, Inc. Plaintiff maintains that these subsidiaries existed as separate, corporate entities in name only, and were all, in actuality, part of a single, multinational enterprise conducted by the parent corporation out of its main office in New Orleans, Louisiana. In support of that contention, plaintiff has described the interlocking directorates which characterized these subsidiary firms, as well as their extensive reliance upon the parent as a source of financing, markets, and technical assistance.

Defendants respond by emphasizing the structural atonomy of the foreign subsidiaries, as well as their independence from the parent firm in operating on a day-to-day basis. Defendants assert that the vessel on which

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remedies under that statute or suing his employer for negligence in a civil court. An agreement between employee and employer for the payment of workman's compensation benefits operates to bar a subsequent suit against the employer for damages with respect to the same work-related injuries.

plaintiff was injured bore absolutely no connection to the United States since it was registered in Panama, owned by a foreign company with its principal place of business in Belgium, and operated off the coast of Nigeria out of the local offices of a Nigerian corporation. Plaintiff's employer, according to defendants, was a marine contractor in its own right, possessing no relationship with the United States other than the majority ownership of its stock by J. Ray McDermott & Co., Inc.

These contrasting accounts of how this immense multinational concern related to an array of subsidiary corporations scattered throughout the world pose formidable obstacles to the disposition of defendants' motions to dismiss this action on jurisdictional grounds. Key factual issues remain in hot dispute, with little but self-serving affidavits and undocumented allegations to aid in resolving them. Defendants remain enmeshed in a baffling corporate labyrinth which impedes an accurate perception of the actual lines of authority and process of decision-making.

These thorny problems will be faced, if necessary, to dispose of all pending motions in this case. Yet it is in the interests of judicial economy and efficiency to postpone the resolution of such intricate issues, particularly in the absence of a well-delevoped record, where less tangled issues, which may themselves prove conclusive, have also been raised.

* * *

ORDERED that consideration of all of defendants' motions to dismiss this action on various jurisdictional grounds shall be deferred, without prejudice, pending the disposition of defendants' motions for summary judgment on the related grounds of limitations and laches.

SIGNED and ENTERED this 1st day of April, 1981.

/s/ WM. WAYNE JUSTICE
Wm. Wayne Justice
Chief Judge

Opposition

Office - Supreme Court, U.S.
FILED
FEB 19 1982
ALEXANDER L. STEVAS,
CLERK

NO. 81-1347

In the Supreme Court of the United States

OCTOBER TERM, 1981

Alexander Chiazor, et al,

Petitioners

versus

Transworld Drilling Company, Ltd., et al,

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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632 F2d 82 (CA9-1980), cert.
den. 101 S.Ct. 1999 3,4,7

STATEMENT OF THE CASE

This action was brought on behalf of eleven Nigerian survivors of a Nigerian employee of a Nigerian corporation,[1] seeking recovery for his death which allegedly occurred as a result of a flash fire on a submersible drilling rig located in Nigerian coastal waters. The accident occurred on November 13, 1977; the rig had been in the same waters, off the coast of Nigeria, since 1964. Three other Nigerians were burned in the fire, but survived and presumably could be witnesses if the case were tried.[2]

Medical care was rendered on the rig by a

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1. The decedent was employed by Dresser (Nigeria) Ltd. or Dresser Magcobar, another Nigerian concern. He was not an employee of any of the defendants, but both courts below assumed, for purposes of the defendants' motion to dismiss, that he could qualify as a "borrowed employee" of Transworld Drilling Company (Nigeria), Ltd.

2. The crew on the rig at the time consisted of five Americans, one Britisher and thirty-nine Nigerians.

Nigerian male nurse, and the injured men were then taken to a hospital in Warri, Nigeria, where Chiazor expired.

The action was originally brought against Transworld Drilling Company (Nigeria), Ltd. and Transworld Drilling Company; the other defendants were brought in later, by supplemental pleadings. Defendants moved to dismiss on various grounds, including *forum non conveniens.*

Applying the *Lauritzen v. Larsen*[3] guidelines, the District Court found that the United States did not have sufficient interest in the transaction to warrant application of its rules of decision to it and, on the basis of *Gulf Oil Corp. v. Gilbert,* 330 US 501 (1947), dismissed the action on the grounds of *forum non conveniens.* Petitioners appealed, asserting that the District Court had abused its discretion. The Court of Appeals disagreed with petitioners and affirmed the dismissal.[4]

SUMMARY OF ARGUMENT

Petitioners offer no valid reasons for allowance

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3. 345 US 571 (1953).

4. *Chiazor v. Transworld Drilling Company, Ltd.* 643 F2d 1015 (CA5-1981).

of a writ. The Courts of Appeal which have considered the question are in harmony and have forged a better and more logical rule for this type of case than the cumbersome standards advocated by petitioners.

REASONS FOR REFUSAL OF WRIT

Even a superficial reading of the petition raises a legitimate question as to why a writ should be granted here, since the contradiction between petitioners' request, on the one hand, and the linkage of this case, on the other, with *Phillips v. Amoco Trinidad Oil Co.*[5], a case in which this Court denied certiorari in April 1981, almost jumps off the pages. Yet petitioners offer no explanation why this Court, having just recently denied certiorari in the analogous case, should grant certiorari in this one.

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5. 632 F2d 82 (CA9-1980) cert. den. 101 SCt 1999.

There are, of course, more positive reasons for refusal to grant the writ. For example, the attempt to show a split of authority between the Court of Appeals for the Fifth Circuit, in this case, and the Court of Appeals for the Third Circuit, in *Chirinos de Alvarez v. Creole Petroleum Corp.*, 613 F2d 1240 (CA 3-1980), does not bear analysis. In fact, *Chirinos* (along with *Phillips)* was cited by the Court of Appeals in the present case as an instance in which the courts had recently rejected the application of American law under similar circumstances.[6] Undaunted, petitioners seek to imply that *Chirinos* would mandate a jury trial on the issue, in this case, of whether respondents' base of operations was in the United States or in Nigeria. In their zeal, petitioners have all but overlooked footnote 4 of the *Chiazor* opinion in the Court of Appeals in which the court states that it will assume, for present purposes, that the base of respondents' operation is in the United States.[7] This assumption should have

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6. *Chiazor v. Transworld Drilling Company, Ltd.*, 648 F2d 1015, 1018 (CA5-1981).

7. *Id.*, p. 1018.

satisfied any *Chirinos*-based objections petitioners may otherwise have had.[8]

The Court of Appeals listed the following findings regarding substantiality of contacts with Nigeria rather than the United States:

1- The decedent was a Nigerian citizen;

2- He was employed by Nigerian corporations;

3- The accident occurred off the coast of Nigeria;

4- The "vessel" has been stationed off Nigeria since 1964; and

5- The plaintiffs are all Nigerian citizens;

and said that these factors, which may be less substantial in the shipping context, tend to take on added significance under the present circumstances, whereas the "base of operations" factor, taken in the totality of the circumstances of the case, is but a minor weight in the scales.[9]

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8. Petitioners received all and more than could be expected from the fact finders - who not only made the above assumption, but also assumed member of the crew status [a rather liberal assumption in the face of such cases as *Cox v. Otis Engineering Corp.*, 474 F2d 613 (CA5-1973)].

9. *Chiazor v. Transworld Drilling Company, Ltd.*, 648 F2d 1015, 1018 (CA5-1981).

None of the listed findings were, or could have been, challenged. These are facts, and for plaintiffs to pretend that they need a jury to determine the accuracy of those facts demonstrates the frivolity of the petition.

The petition attempts to raise the issue of discrimination on two grounds, nationality and industry. But the only weight given to nationality in either opinion below recently was sanctioned by this Court in *Piper Aircraft Company v. Reyno*, 50 USLW 4055, December 8, 1981,[10] and the charge of discrimination on the basis of industry, bottomed as it is on the absence of language in *Lauritzen* or *Rhoditis*,[11] is less than ingenious since neither of those cases had any occasion to consider offshore drilling operations. Indeed, the discussion in *Lauritzen* showing that international and maritime law aim at

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10. Nationality is a legitimate factor in weighing the contacts with the competing forums.

11. *Lauritzen v. Larsen*, 345 US 571 (1953); *Hellenic Lines Ltd. v. Rhoditis*, 398 US 306 (1970).

stabilization and order[12] indicates that this Court would adopt the same approach as has the Fifth Circuit in this case and the Ninth Circuit in *Phillips*, with respect to offshore drilling rigs operating in a fixed area, as this approach recognizes that there is no need for reconciliation of "varieties of legal authority over waters (the ship) may navigate."[13]

The last mentioned charge - discrimination on the basis of industry, performs a service, however. It illustrates that the reason for this appeal is simply that petitioners continue in their refusal to recognize that this type of case allows for, indeed demands, a return to such principles as *lex loci delicti commissi*,[14] to foster stability and certainty in the place of the uncertainty of the jurisdictional rules applicable to bluewater seamen, to which petitoners, without any well-founded reason or sound theory, now ask the Court to extend to a set of circumstances different from those that fostered them.

CONCLUSION

For the foregoing reasons, it is respectfully sub-

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12. 345 US at p. 582.

13. *Id.* at p. 583.

14. See, *Lauritzen v. Larsen*, 345 US 571, 583 (1953), wherein it is pointed out that this rule of locality is the solution most commonly accepted as to torts in our municipal and in international law.

mitted that the request by petitioners for a writ of certiorari should be denied.

Respectfully submitted,

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and
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Attorneys for Respondents

CERTIFICATE

I hereby certify that the foregoing Response to Petition for Writ of Certiorari has been served on Petitioners by mailing a true and correct copy thereof, postage prepaid and properly addressed, to their counsel of record, Mr. C. Benton Musslewhite, 3506 Travis Street, Houston, Texas 77002, this _____ day of February, 1982.

I further certify that all parties required to be served have been served.

CHRISTOPHER TOMPKINS